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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 48

SWITCHMEN'S UNION OF NORTH AMERICA, IN ITS OWN RIGHT, ETC., T. C. CASHEN, ET AL., PETITIONERS,

vs.

NATIONAL MEDIATION BOARD, GEORGE A. COOK, WILLIAM M. LEISERSON, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED APRIL 16, 1943.

CERTIORARI GRANTED MAY 24, 1943.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

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IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Consolidated Appendix for Appellants and Appellees—
Filed October 22, 1942

I

Pleadings, Docket Entries and Other Papers Designated

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DOCKET ENTRIES

CIVIL DOCKET
DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

NUMBER	PARTIES	ATTORNEYS	ACTION FOR	TAXED COSTS
11938	BROTHERHOOD OF RAILROAD TRAINMEN, In its own right, and as the legal representative of the yardmen, consisting of foremen or conductors, helpers or brakemen, switchtenders and car retarder operators in the employ of the Michigan Central Railroad Company and New York Central Railroad Company - Lines West, 8 Linwood Avenue, Buffalo, New York, and T. C. CASHEN, 8 Linwood Avenue, Buffalo, New York, JOHN W. WOLFE, 806 Bedford Road, Cleveland Heights, Ohio, and E. F. ROCHELLI, B.Y.D. No. 2, Jackson, Michigan, As representatives of the class of yardmen employed on the Michigan Central Railroad Company and the New York Central Railroad Company - Lines West who are members of the Brotherhood of Railroad Trainmen's Union of North America, Plaintiffs, v. NATIONAL MEDIATION BOARD, Old Interior Department Building, 18th & F Streets, N. W., Washington, D. C. 2 GEORGE A. COOK, 3 OTTO S. BEYER, and 4 DAVID J. LEWIS, Individually and as members of the National Mediation Board, Old Interior Department Building, 18th & F Streets, N. W., Washington, D. C., and 5 BROTHERHOOD OF RAILROAD TRAINMEN, a voluntary unincorporated association, Cleveland, Ohio. 6 New York Central Railroad Company a New York corporation, Defendants. 7 Michigan Central Railroad Company a Michigan Corporation	Nancy O'Weaver Jr Donald R. Richberg Rufus G Poole Frank Coleman Robert L Stern H. Graham Morison St Defendants Alfred L Barrett Samuel M. Savage Henry Wilson A Rudolph	To issue and attend action of board	Attorney, Marshal, Clerk, Witnesses, Depositions, Examiner, Ct. Appts.

DATE		Dozens	Rate	Total
1941	DEPOSIT BY - Weaver	10 -	10 -	10 -
June 27	Complaint & Exhibit (1)			filed
" "	Summons & copies (4) compts 1-2-3-4-	Served all 6/27/41		
" "	" (1) " " #5.	" 7/7/41- Fee 2.06		
" 1	Affidavit of Service			filed
July 2	Motion for Preliminary Injunction & Order			
" 3	Affidavit of Service of Motion for Preliminary Injunction.			filed
" 10	Defts Notice of Motion to Dismiss			
" 21	" " " Defts Motion to Dismiss			
Aug 7	Notice of dismissal & dismissal			
" 8	Stipulation - time to answer & answer ord 6 Aug 1941			
" 14	Plaintiff's powers revoked			
" 19	Order denying motion for preliminary injunction & to dismiss - Aug 18			
" 25	Answer of defendants 1, 2, 3 & 4 by Atty-General			
" 1	Affidavit of service of answer			
" 28	Answer of defts #5 by Savage - notice			
" 28	Affidavit of service			
Dec 12	Pltf Motion & Order Pretrial, served			

v.

NATIONAL MEDIATION BOARD, Old Interior Department Building, 19th & F Streets, N. W., Washington, D. C.
2 GEORGE A. COOK,
3 OTTO S. BEYER, and
DATE 4 DAVID J. LEWIS, Individually and as members of the National Mediation Board, Old Interior Department Building, 19th & F Streets, N. W., Washington, D. C.,
and
5 BROTHERHOOD OF RAILROAD TRAINMEN, a voluntary unincorporated association, Cleveland, Ohio.
6 New York Central Railroad Company a New York corporation, Defendants.
7 Michigan Central Railroad Company a Michigan corporation

Ingalsbee, Fahy & Clagett
Robert T. Lyon,
H. Stephenson

Alfred L. Barrett
Barnard M. Savage
Henry Billings
A. Reid Allen

DATE			Deposits	Fees	Taxes
1941		DEPOSIT BY - Plaintiff	10 -	10 -	10 -
June	27	Complaint & Exhibit (1)			
"	"	Summons & copies (4) compt to 1-2-3-4- Served all 6/27/41			
"	"	" (1) " " #5 " 7/9/41 - Fee $2.00			
"		Affidavit of Service			
July	7	Motion for Preliminary Injunction & Compl.			
"		Affidavit of Service of Motion for Preliminary Injunction.			
"	10	Defts. Notice of Motion by Calhoun et al			
"	21	" " " Defts's Supplemental motion by Powell			
Aug	7	Notice of defts motion & decision			
"	8	Stipulation - time to ans no & decision ord 6 Aug '41			
"	14	Plaintiff's points & authorities			
"	19	Order denying motion for preliminary injunction & to dismiss - Arnold (1)			
"	25	Answers of defendants 1, 2, 3 & 4 by atty-general			
"		Affidavit of service of answers			
"	28	Answer of defts 5 & 6 by Savage - notice			
"	28	Affidavit of service			
Dec	12	Plff's motion to Add Parties, answer			
		Order adding New York Central Railroad Co & Michigan Central Railroad Co as party defts - Arnold (1)			
	15	Amended complaint & Exhibit (1)			
"	"	Summons & copy (8) compt & amended compt to 5 & 6 - Served all defts			
"	"	" " " (1) " " " #7			
"	24	Answer of Defts 1 to 4 by Brattingham			
1942 Jan	5	Stipulation extending time for defts #1 to 6 file & rel to 1942 - Approved Arnold J. for defts #5 & 6			
"	28	Answer of defts 5 & 6 to amended compl			
Feb	9	Stip of Counsel Plff & defts 5 & 7 may answer or plead by Mch 2 1942			
"		Answer of Defendants Nos. 5-7- Denied.			
Mch	19	Motion of Defts 5 & 6 & Order & Acknowledgment of service			
		Calendared.			
"	19	Order advancing cause for trial on 5/11/42 - Bailey J.			
Apr	15	Appearance Brattingham et al for defts #1-2-3 & 4			
"	"	Plaintiffs given leave to amend complaint by Apr 25/42.			
		amended answer & to be filed by May 8/42. Proctor			
"		Pretrial Proceedings Proctor			
"	24	Amended Complaint & Exhibit (1) filed			
May	4	Answer of Defts 5 & 6 to Amended Complaint			

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Switchmens Union et al vs National Mediation Board et al

1942	May	9	Amended answer of defendants #1-2-3 & 4	filed
"	"	"	" " " " #5	"
"	"	11	Stipulation re Hearing thereon, Argument, Submitted. Exhibits in file returned to Donoghue &	
"	"	11	Memorandum of Donoghue & Donoghue for Defendants	
"	July	10	Finding of Fact & Conclusions of Law & Opinion. J. O Donoghue J.	
"	"	10	Judgment. Dismissing Complaint with costs to Defts. " " "X" atty.	
—	July	26	Entry of appearance of Richberg et al as atty for plaintiff	
"	"	28	Plaintiffs notice of appeal Copies mailed	filed
	"	"	Deposit for costs by Bole	5 - 5 - 5
	"		Cost bond on appeal $250.00 with Hartford Accident and Indemnity Company as surety approved & filed	
"	Aug	13	Pltf's motion for preliminary injunction pending appeal, notice, P&A	
"	"	20	Stipulation to waive filing of transcript on appeal -	filed
"	"	20	" " as to record on appeal	"
—	—	—	Order directing the issue of original transcript in Court of Appeals. Mc Laurin J.	
—	—	21	P&A of Defts in Opposition to preliminary injunction pending appeal	

2

[fol. 3] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

AMENDED COMPLAINT TO ENJOIN AND SET ASIDE ACTION OF THE NATIONAL MEDIATION BOARD—Filed April 24, 1942

Pursuant to leave of Court heretofore had and obtained on the 15th day of April, 1942, the plaintiffs, Switchmen's Union of North America, and T. C. Cashen, International President of Switchmen's Union of North America, John W. Wolfe and R. F. Rockwell, (representatives and members of the class of yardmen employed by New York Central Railroad—Lines West of Buffalo, and the Michigan Central Railroad Company, and who are members of Switchmen's Union of North America), file this amended complaint on behalf of themselves and on behalf of all yardmen of the New York Central Railroad—Lines West of Buffalo, and the Michigan Central Railroad Company, and on behalf of such other persons as have an interest herein and may by proper proceedings be made parties hereto, and respectfully show this Honorable Court as follows:

Par. 1. The plaintiff, Switchmen's Union of North America, (sometimes hereinafter referred to as "Switchmen's Union"), with its principal office at Buffalo, New York, is a voluntary unincorporated association composed of employees of various railroads throughout the United States and Canada, who serve the railroads as yardmen (consisting of foremen or conductors, helpers or brakemen, switchtenders and car retarder operators.) Membership in the Switchmen's Union is confined to persons actually employed in switching service, such as switchmen, (foremen or conductors, helpers or brakemen) switch tenders, tower men, interlocking men, car retarder operators and yard masters.

On July 1, 1940, and for many years prior thereto, the plaintiff, Switchmen's Union, represented for the purpose of collective bargaining the yardmen (consisting of foremen or conductors, helpers or brakemen, switchtenders and car retarder operators) employed by the New York [fol. 4] Central Railroad Company in certain of its yards located west of Buffalo, New York, and by the Michigan Central Railroad Company in its yards located west of Detroit, Michigan, and negotiated and entered into collective bargaining agreements on behalf of the said yardmen so

employed concerning rates of pay, hours of service, rules and working conditions.

Par. 2. The plaintiff, T. C. Cashen, is International President and a member of the Switchmen's Union, and a resident of Buffalo, New York.

Par. 3. The plaintiff, John W. Wolfe, is a member and Chairman of the General Adjustment Committee of the Switchmen's Union on the New York Central Railroad—Lines West of Buffalo, and a resident of Cleveland Heights, Ohio.

Par. 4. The plaintiff, R. F. Rockwell, is a member and Chairman of the General Adjustment Committee of the Switchmen's Union on the Michigan Central Railroad Company, and is a resident of Jackson, Michigan.

Par. 5. The defendant, National Mediation Board, is an independent agency in the executive branch of the United States Government created by Public Law No. 442, 73rd Congress (45 U. S. C. A., 151 et seq.), commonly known as the "Railway Labor Act", of whose seal this Court under the terms of said Act takes notice, with its principal office in the District of Columbia.

Par. 6. The defendant, George A. Cook, is a citizen of the United States, a resident of the District of Columbia, and a member and Chairman of the said National Mediation Board, and is sued herein as a member of said National Mediation Board.

Par. 7. The defendant, Otto S. Beyer, is a citizen of the United States, a resident of the District of Columbia, and a member of said National Mediation Board, and is sued herein as a member of said National Mediation Board.

Par. 8. The defendant, David J. Lewis, is a citizen of the United States, a resident of the District of Columbia, and [fol. 5] is a member of the National Mediation Board, and is sued herein as a member of said National Mediation Board.

Par. 9. The defendant, Brotherhood of Railroad Trainmen, (sometimes hereinafter referred to as the "Trainmen"), is a voluntary unincorporated association having its principal office in the City of Cleveland, State of Ohio. It is a labor union composed of employees of various railroads

throughout the United States and Canada who serve such carriers as conductors, brakemen, yardmen, baggagemen and other service employees. Membership in the defendant "Trainmen" is not confined to employees engaged in switching service but is composed of persons, the majority of whom are engaged in road service as brakemen, road conductors, as well as dining car stewards, ticket collectors, gate tenders, and yardmen.

Par. 10. The defendant, New York Central Railroad Company, a New York corporation, is a corporate common carrier by railroad with its principal place of business in New York, N. Y.

Par. 11. The defendant, Michigan Central Railroad Company, a Michigan corporation, is a corporate common carrier by railroad with its principal place of business at Detroit, Michigan.

Par. 12. This is a suit of a civil nature, which arises under the Constitution and Laws of the United States, particularly under the Act of Congress of May 20, 1926, known as the Railway Labor Act, 44 Stat. 577, as amended June 21, 1934, by Public Act No. 442 of the 73rd Congress of the United States, and the laws of the United States relating to interstate commerce, and is instituted pursuant to the provisions of said Railway Labor Act as amended and the laws of the United States relating to interstate commerce, and also under the general equity jurisdiction of this Court, by reason whereof this Court has jurisdiction of this suit.

[fol. 6] This suit is brought by the plaintiffs to have vacated, cancelled, set aside and declared null and void and of no effect certain findings and conclusions made and entered by the defendant Board and the defendant members thereof on May 27, 1941, in Case No. R-690, entitled "In the Matter of Representation of Employees of the New York Central Railroad Company", wherein it was arbitrarily, capriciously, unreasonably and contrary to law determined by the defendant Board and members thereof that a bona fide representation dispute existed among employees of the New York Central Railroad Company—Lines East, the New York Central Railroad Company—Lines West, Boston & Albany Railway Company, Cleveland, Cincinnati, Chicago and St. Louis Railway Company, Toledo & Ohio Central Railway Company and Michigan Central Railroad

Company serving said railroads as yardmen (consisting of foremen or conductors, helpers or brakemen, switchtenders and car retarder operators), that employees of the New York Central Railroad Company—Lines East, New York Central Railroad Company—Lines West, Michigan Central Railroad Company, Boston & Albany Railway Company, Toledo & Ohio Central Railway Company, Cleveland, Cincinnati, Chicago and St. Louis Railway Company, serving said companies as yardmen, be combined under the Railway Labor Act in the selection of a single representative for the purpose of collective bargaining, and that numerous separate carriers controlled by the New York Central Railroad Company through leases or stocks ownership constitute a single carrier for the purpose of collective bargaining under the Railway Labor Act; and to have vacated, cancelled, set aside and declared null and void and of no effect, because arbitrary, capricious and contrary to law, the certification issued by said Board and the defendant members thereof on October 22, 1941, in the said case No. R-690, certifying the defendant, Brotherhood of Railroad Trainmen, as the representative of employees of the New [fol. 7] York Central Railroad Company—Lines West, and of the Michigan Central Railroad Company, serving said companies in the capacity of yardmen, for the purposes of collective bargaining; and to enjoin the defendants, New York Central Railroad Company, Michigan Central Railroad Company, and Brotherhood of Railroad Trainmen, their officers and agents, from negotiating or entering into any agreement or agreements predicated upon the said certification of the Board under date of October 22, 1941, concerning wages, hours, rules or working conditions relative to the yardmen employed by the New York Central Railroad Company—Lines West, and the Michigan Central Railroad Company, all for reasons which will more particularly appear hereinafter.

Par. 13. Prior to December, 1914, the Lake Shore & Michigan Southern Railway Company, a common carrier by railroad, operated lines extending generally from Buffalo, N. Y. to Chicago, Ill. Prior to December, 1914, the New York Central & Hudson River Railroad Company, a common carrier by railroad, operated lines extending generally from New York, N. Y. to Buffalo, N. Y. In December, 1914, the Lake Shore & Michigan Southern Railway Company and

the New York Central & Hudson River Railroad Company were consolidated to form the New York Central Railroad Company, extending from New York, N. Y. to Chicago, Ill. That portion of the New York Central Railroad Company which formerly comprised the Lake Shore & Michigan Southern Railway Company is now commonly known as the New York Central—Lines West of Buffalo; and that portion of the New York Central Railroad Company which formerly comprised the New York Central & Hudson River Railroad Company is now commonly known as the New York Central—Lines East. Pursuant to the Interstate Commerce Act and amendments thereto and regulations of the Interstate Commerce Commission thereunder, the New York Central Railroad Company—Lines East and the New York [fol. 8] Central Railroad Company—Lines West, each furnishes the Interstate Commerce Commission with separate monthly accident reports covering its respective operations and properties.

The New York Central Railroad Company controls numerous other railroads through long-term leases or ownership of stock. The New York Central Railroad Company together with the numerous other railroads so controlled are operated under the trade name of New York Central Railroad System. Among the numerous railroads so controlled are the following, each and all of which are subject to the Interstate Commerce Act:

(a) The Cleveland, Cincinnati, Chicago & St. Louis Railway Company (sometimes herein referred to as the "Big Four"), which is an Ohio and Indiana corporation and owns a line of railroad transporting freight and passengers in interstate commerce.

(b) The Michigan Central Railroad Company (sometimes herein referred to as "Michigan Central"), which is a Michigan corporation and owns a line of railroad transporting freight and passengers in interstate commerce.

Effective February 1, 1930, the Big Four, then operating a railroad generally from Cleveland, Ohio, to Cincinnati, Ohio, Chicago, Illinois, and St. Louis, Missouri, and the Michigan Central Railroad Company, then operating a line of railroad extending generally from Buffalo, New York, to Chicago, Ill., through Detroit, Michigan, leased their respective properties to the New York Central Railroad Company for a term of ninety-nine years.

(c) The Boston & Albany Railroad Company (sometimes herein referred to as the "Boston & Albany"), which is a Massachusetts and New York corporation and owns a line of railroad transporting freight and passengers in interstate commerce. Effective July 1, 1900, the Boston & Albany leased its property to the New York Central Railroad Company for a term of ninety-nine years.

[fol. 9] (d) The Toledo & Ohio Central Railway Company (sometimes herein referred to as the "Ohio Central"), which is an Ohio corporation and owns a line of railroad transporting freight and passengers in interstate commerce. Effective January 1, 1922, the Ohio Central leased its property to the New York Central Railroad Company to continue for the corporate existence of the lessor company.

Pursuant to the Interstate Commerce Act and amendments thereto and regulations of the Interstate Commerce Commission thereunder, the Big Four, the Michigan Central, the Boston & Albany and the Ohio Central each furnishes separate annual financial reports and separate monthly accident reports covering its respective properties and its respective operations. Likewise, the Boston & Albany, in addition to the said annual financial reports and monthly accident reports, furnishes the Interstate Commerce Commission with annual operating reports.

Likewise, the New York Central Railroad Company does not file with the Interstate Commerce Commission all of the reports required by said Commission for each of the lessor, subsidiary and consolidated carriers, comprising the New York Central Railroad System, other than the carriers last mentioned above. The New York Central Railroad Company files with the Interstate Commerce Commission only one type of report, an operating report, for only certain of the carriers comprising the New York Central Railroad System. Some of the subsidiary carriers of the New York Central Railroad System, separately file operating reports, and all of the lessor, controlled and subsidiary carriers separately file various other types of reports with the Interstate Commerce Commission including annual financial reports. Illustrative of the said numerous carriers so filing said separate reports are the Pittsburgh & Lake Erie Company (sometimes herein referred to as the "Pittsburgh & Lake Erie"), a Pennsylvania and Ohio corporation, and the Peoria & Eastern Railway Company (sometimes herein re-

[fol. 10] ferred to as the "Peoria and Eastern"), an Illinois corporation, each of which carriers are subsidiaries of the New York Central Railroad Company, and each of which carriers files separate annual financial reports, monthly accident reports, and annual separate reports.

Par. 14. Long prior to December, 1914, when that portion of the New York Central Railroad Company now known as Lines West of Buffalo was a separate corporate carrier by railroad under the name of the Lake Shore & Michigan Southern Railway, the said Switchmen's Union negotiated and maintained a schedule or agreement with said Lake Shore & Michigan Southern Railway concerning rates of pay, hours, rules and working conditions of yardmen employed on the said railroad, which said yardmen constitute a separate class or craft of employees. The said agreement, with certain modifications and additions, is now and has continuously been in full force and effect. On July 2, 1940 and during the many years prior thereto that the said agreement or schedule was in effect, the Switchmen's Union was the representative of the said yardmen for the purpose of collective bargaining agreements concerning rates of pay, hours, rules and working conditions of the said craft or class of employees.

Likewise, long prior to the year 1930, the said Switchmen's Union negotiated and maintained a schedule or agreement with the Michigan Central concerning rates of pay, hours, rules and working conditions of yardmen employed on the Michigan Central, which said yardmen constitute a separate craft or class of employees. The said agreement with certain modifications and additions is now and has continuously been in full force and effect. On July 2, 1940, and during the many years prior thereto that the said agreement or schedule was in effect, the Switchmen's Union was the representative of the said yardmen for the purpose of collective bargaining and for negotiating and maintaining collective bargaining agreements with the Michigan Central [fol. 11] concerning rates of pay, hours, rules and working conditions of the said craft or class of employees.

The said yardmen so employed on the New York Central Lines West, and the Michigan Central, during the many years that the aforesaid agreements or schedules with the Switchmen's Union were in effect, acquired certain positions on seniority rosters, maintained and established pur-

suant to the provisions of the said agreements or schedules. The said positions on the said seniority rosters constitute seniority rights which are valuable, contractual property rights. These valuable, contractual property rights will be destroyed if the Findings and Order and the certification of the defendant, Mediation Board, which said Findings and Order and certification are hereinafter described in detail, are not vacated and set aside, and the defendant, Trainmen, are permitted to negotiate and maintain pursuant to the said certification a new contract affecting the said yardmen so employed on the New York Central—Lines West, and the Michigan Central.

Par. 15. The defendant Trainmen on and prior to July 2, 1940, represented for the purposes of collective bargaining under the Railway Labor Act the yardmen employed on the New York Central—Lines East, the Ohio Central, the Big Four, and the Boston & Albany. On said date all yardmen employed on each of said lines were working under an agreement or schedule which had been separately negotiated with each of said lines by the Trainmen. On said date no one was questioning the right of the Trainmen to represent the yardmen employed on each of said lines for the purposes of collective bargaining.

Par. 16. On and long prior to July 2, 1940, the lessor, subsidiary and consolidated carriers comprising the New York Central Railroad System, and particularly the Boston & Albany Railway Company, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, The Toledo & Ohio Central Railway Company, The Michigan Central Railroad [fol. 12] Company, the New York Central Railroad Company—Lines East, the New York Central Railroad Company—Lines West, the Pittsburgh & Lake Erie Railroad Company, the Peoria & Eastern Railway Company, and other have generally negotiated and maintained, and continue to negotiate and maintain, separate contracts concerning rates of pay, hours and working conditions affecting employees in practically all of the railroad crafts or classes familiar to the railroad industry. On and long prior to July 2, 1940, other railway labor organizations, national in scope, represented employees of various crafts or classes in bargaining collectively with the several units or lines of the so-called New York Central Railroad System. Employees in the general classes of engineers, firemen, train

dispatchers, clerical employees, maintenance-of-way employees and signal employees, through their respective national or international labor organizations, have negotiated and maintain separate agreements concerning rates of pay, rules and working conditions with various units or lines of the so-called New York Central System. It has been the general custom and practice for labor organizations representing employees of the various classes or crafts employed on the so-called New York Central System to negotiate separate and distinct working agreements for employees attached to the New York Central Railroad—Lines East, to the New York Central Railroad—Lines West, to the Boston & Albany, to the Michigan Central, to the Big Four, and to the Ohio Central Lines. With the exception of the agreement covering dining-car stewards, there is not now and never has been an agreement concerning rates of pay, rules or working conditions applicable to the entire system.

Par. 17. The pertinent provisions of the Railway Labor Act defining its purpose, announcing rights and privileges of those affected thereby, and conferring jurisdiction upon the National Mediation Board and its members thereof, are as follows:

[fol. 13] "Section 1. First. The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such 'carrier': Provided, however, that the term 'carrier' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing

whether any line operated by electric power falls within the terms of this proviso.

Fifth. The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performed any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders; Provided, however, that no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers [fol. 14] of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

Sixth. The term 'representative' means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Section 2. (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way ques-

tion the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contri- [fol. 15] butions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated, the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a

committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the [fol. 16] carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph."

Par. 18. On July 2, 1940, the Brotherhood of Railway Trainmen, in writing, invoked the services of the National Mediation Board to investigate an alleged representation dispute among employees constituting the craft or class of yardmen (consisting of foremen or conductors, helpers or brakemen, switchtenders and car retarder operators) in the employ of the "New York Central Railroad System". A copy of the invocation cannot be incorporated herein or attached hereto because the National Mediation Board and its officers, upon request, have refused to furnish a copy or divulge the contents of said written invocation.

Par. 19. On January 20, 1941, the National Mediation Board assigned a mediator to begin the investigation of the alleged dispute. Representatives of the Brotherhood of Railroad Trainmen and representatives of the Switchmen's Union did not agree upon an eligible list of voters. Thereafter, on February 10, 1941, the National Mediation Board gave notice to interested parties of a hearing to be held by the Board, which reads in part as follows:

"Whereas, the representative of the Brotherhood of Railroad Trainmen and the Switchmen's Union of North America could not be brought into agreement as to whether all of the yardmen together, employed by the lines and railroads composing the New York Central System, as outlined by the Brotherhood of Railroad Trainmen and hereinbefore mentioned, constitute the basis upon which their representation should be determined under the provisions of the Railway Labor Act or whether this basis of representation should be by the yardmen as employed on individual lines or railroads and lines of the New York Central System, by some portion or portions thereof, or by some combination of these lines or railroads."

[fol. 17] Beginning at 10 o'clock in the forenoon of February 20th, and concluding at 3 o'clock P. M. on February

21st, the Board conducted a hearing at its offices in Washington, D. C. On May 27, 1941, the Board issued its Findings and Order, a copy of which is hereto attached, marked "Exhibit A" and made a part hereof.

Par. 20. Subsequent to the findings and order of the Board, mediators were assigned to conclude the investigation of the alleged dispute by conducting an election among the yardmen of the New York Central—Lines East, New York Central—Lines West, Michigan Central, Boston & Albany, Big Four, and Ohio Central. The mediators so assigned held an election among the yardmen of all of said lines, which began, on or about September 2, 1941, and was concluded on or about October 5, 1941. All of the ballots voted at said election were commingled and the result of the election was canvassed and reported by said mediators to the defendant Board, which in turn, on or about October 22, 1941, issued its certification, a copy of which is hereto attached, marked Exhibit "B" and made a part hereof, by which the defendant Board certified that "The Brotherhood of Railroad Trainmen has been duly designated and authorized to represent the craft or class of yardmen (consisting of yard foremen or conductors, helpers or brakemen, switch tenders and car retarder operators) employed by the New York Central Railroad Company for purposes of the Railway Labor Act."

Par. 21. Less than a majority of the total number of the employees of the Michigan Central Railroad Company, and less than a majority of the total number of employees of the New York Central Railroad Company—Lines West, employed as yardmen, and eligible to vote at the said election, so voted at the said election. Numerous yardmen employed on the Michigan Central Railroad and clearly eligible to vote at the said election were not permitted by the said Board to so vote. Moreover, while the aforesaid Findings and Order directed that the mediators "shall regard as the [fol. 18] proper basis for representation of the yardmen in the service of the entire New York Central Railroad Company, all of the yardmen in such service", the election was not conducted among the yardmen employed over the entire so-called New York Central Railroad System. On the contrary, the yardmen employed on the following, among other, separate lines and units of the so-called New York Central Railroad System were excluded from the election:

Pittsburgh & Lake Erie Railroad Company, Louisville & Jeffersonville Bridge & Railroad Company, an Indiana and Kentucky corporation, the Indiana Harbor Belt Railroad Company, an Illinois and Indiana corporation, the Chicago River & Indiana Railroad Company, an Illinois corporation, and the Cleveland Union Terminals Company, an Ohio corporation. All of the said lines and units of the so-called New York Central Railroad System which were excluded from the said election are related to the so-called New York Central Railroad System in substantially the same manner as the units and lines of the said so-called system included in the said election.

Par. 22. Brotherhood of Railroad Trainmen, through its representatives and agents, has instituted or is attempting to institute negotiations with the New York Central Railroad Company and with the Michigan Central Railroad Company, pursuant to the said certification of the defendant Board, for the purpose of arriving at, entering into, and maintaining an agreement or agreements with said companies concerning rates of pay, rules and working conditions of the plaintiffs and others similarly situated as yardmen employed on the New York Central Railroad Company—Lines West and the Michigan Central Railroad Company.

Par. 23. The findings of the Board are not supported by evidence, are contrary to the evidence, contrary to law, arbitrary and capricious. The evidence before the Board, among other things, discloses that:

a. On and long prior to July 2, 1940, the lessor, subsidiary and consolidated carriers comprising the New York [fol. 19] Central Railroad System, and particularly the Boston & Albany, the Big Four, the Ohio Central, the Michigan Central, the New York Central—Lines East, the New York Central—Lines West, the Pittsburgh & Lake Erie, the Peoria & Eastern, and others have generally negotiated and maintained, and continue to negotiate and maintain, separate contracts concerning rates of pay, hours and working conditions affecting employees in practically all of the railroad crafts or classes familiar to the railroad industry.

b. The New York Central Railroad Company does not file with the Interstate Commerce Commission all of the re-

ports required by said Commission for each of the lessor, subsidiary and consolidated carriers comprising the New York Central Railroad System.

c. The New York Central Railroad Company files with the Interstate Commerce Commission only one type of report, an operating report for certain only of the carriers comprising the New York Central Railroad System; some of the subsidiary carriers of the New York Central Railroad System separately file operating reports; and all of the lessor, controlled or subsidiary carriers separately file various other types of reports with the Interstate Commerce Commision, including annual financial reports.

d. No representation dispute exists within the meaning of the Railway Labor Act among the employees of the Boston & Albany, of the Big Four, of the Ohio Central, of the Michigan Central, of the New York Central Railroad Company—Lines East, of the New York Central Railroad Company—Lines West, of the Pittsburgh & Lake Erie, or of the Peoria & Eastern. The defendant Trainmen on and prior to July 2, 1940, represented for the purposes of collective bargaining under the Railway Labor Act the yardmen employed on the New York Central—Lines East, the Ohio Central, the Big Four, and the Boston & Albany. On said date all yardmen employed on each of said lines were working under an agreement or schedule which had been separately negotiated with each of said lines by the [fol. 20] Trainmen. On said date no one was questioning the right of the Trainmen to represent the yardmen employed on each of said lines for the purposes of collective bargaining.

e. The Boston & Albany, the Michigan Central, the Big Four, the Ohio Central, the Pittsburgh & Lake Erie, and the Peoria & Eastern each own a line of railroad used for the transportation of persons and property in interstate commerce, are subject to the Interstate Commerce Act, and are controlled by the New York Central Railroad Company.

f. The executives of the New York Central Railroad Company are supervisory officers of the New York Central Railroad System and are not the officers who customarily negotiate labor contracts for the lessor or subsidiary units of the New York Central Railroad System.

g. The New York Central Railroad Company, in accordance with long established custom, in the interest of the public, the employees and the New York Central Railroad System, desires the continuance of present existing bargaining units or divisions.

h. Valuable seniority and other property and contractual rights of the plaintiffs are vitally involved and will be destroyed if the said Findings and Order and said certification are not vacated and set aside and the said Trainmen are permitted to negotiate, enter into and maintain a new contract affecting the yardmen employed by the New York Central Railroad—Lines West, and by the Michigan Central.

i. The New York Central Railroad Company is not "a unification of many separate corporations".

j. The New York Central Railroad Company—Lines East and the New York Central Railroad Company—Lines West are not "merely operating regions of the New York Central Railroad Company" but are the lines formerly owned by the New York Central and Hudson River Railroad Company and the Lake Shore & Michigan Southern Railway Company, respectively, at the time of their consolidation [fol. 21] in December, 1914, as the New York Central Railroad Company.

k. To have a single contract with one labor organization covering employees of the entire System, especially yardmen, would be impractical and be the cause of discontent among such employees on the respective carrier properties and would be contrary to long continued and well established custom, practice and precedent.

l. The situation presented on the lines comprising the New York Central Railroad System is not comparable to the example contained in the resolution of the Board in its first annual report with respect to "what is a carrier".

m. The object and purpose of the Brotherhood of Railroad Trainmen, an organization representing employees of numerous and various classes or crafts is to destroy to its own advantage a small union representing the yardmen employed on the Michigan Central and the New York Central—Lines West, which yardmen constitute separate crafts or classes of employees.

n. The New York Central Railroad Company does not keep all of the payroll records of employees of the various subsidiary lessor and controlled carriers of the New York Central Railroad Company.

o. Separate wage bureaus with which grievances are taken up by labor organizations representing employees are separately maintained for various of the subsidiary lessor and controlled carriers.

p. Negotiations for wage agreements have been and are customarily conducted by the managers of the respective lessor subsidiary or controlled carriers with the Vice-President-Personnel of the New York Central Railroad acting in an advisory capacity only in some instances.

q. The Boston & Albany, the Big Four, the Ohio Central, the Michigan Central, the New York Central Railroad Company—Lines East, the New York Central Railroad Company—Lines West, the Pittsburgh & Lake Erie, and the Peoria & Eastern are carriers by railroad and subject to the Interstate Commerce Act.

[fol. 22] Par. 24. The said Findings and Order of the defendant Board and of the defendant members thereof, the said election held pursuant thereto, and the said certification issued by the said Board are arbitrary, capricious, unreasonable, unlawful, null and void, for the following, among other, reasons:

(a) The defendant Board and its members were without jurisdiction to entertain the aforementioned invocation or to enter or make the said Findings or Order or to hold the said election or to issue the said certification.

(b) The yardmen employed on the Michigan Central constitute a separate craft or class of employees within the meaning of the Railway Labor Act. Likewise, the yardmen employed on the New York Central—Lines West constitute a separate craft or class of employees within the meaning of the Railway Labor Act. The Railway Labor Act neither permitted or required the said Board to combine as it did in the said Findings and Order, election and certification, the said long established and customary independent and separate crafts or classes of employees with the yardmen employed on the Boston & Albany, Big Four, Ohio Central, and New York Central—Lines East into one

craft or class for the purpose of electing a single representative to represent all of the said independent and separate crafts or classes of employees in collective bargaining.

(c) Under the provisions of the Railway Labor Act, the Boston & Albany, the Big Four, the Ohio Central, the Michigan Central, the New York Central—Lines East, and the New York Central—Lines West, and other lines comprising the New York Central System, are separate carriers within the meaning of Section 1, First, of the Railway Labor Act, the employees of which are to select their own representatives according to the provisions of the said Act. The Railway Labor Act neither permitted nor required the said Board to combine as it did in its said Findings and Order said election and certification, the said long established and customary independent and separate employer units or [fol. 23] "carriers" into one employer unit or "carrier" for the purpose of collective bargaining.

(d) The said Findings and Order were and are not supported by the evidence and are contrary to the evidence.

(e) The said election was conducted and held in a manner inconsistent with and contrary to the said Findings and Order of the Board, and the said certification predicated upon the said election is inconsistent with and contrary to the said Findings and Order of the Board.

(f) Valuable seniority rights and other valuable contractual and property rights of the plaintiffs and others similarly situated are destroyed and vitiated without due process of law, in violation of the provisions of the Constitution of the United States.

Par. 25. The said invocation presented to the Board by the Trainmen accompanied by purported authorizations of yard employees on the New York Central—East, New York Central—West, Boston & Albany, Michigan Central, Big Four and Ohio Central, requesting the Board's services to investigate and determine an alleged representation dispute among the yard employees on said lines conclusively disclosed that no bona fide dispute in fact existed within the meaning of the Railway Labor Act. The record before the Board conclusively discloses that no one was or is questioning the right of the yardmen on New York Central—East, Boston & Albany, Ohio Central and Big Four to be

represented by the Trainmen. The Findings of the Board that a dispute existed among said employees was, therefore, contrary to law and to the evidence. Consequently, the Board was without jurisdiction to entertain the above mentioned invocation, to proceed with its investigation, including an election, or to issue the said certification.

The said invocation and the evidence before the Board discloses that the said invocation was not predicated upon a bona fide dispute, but on the contrary, appears to be an application to the Board to create a new employee bargain-g [fol. 24] unit, that is, one craft or class of employees by combining separate and independent long established and customary crafts or classes of employees and to create a new employer bargaining unit by combining long established and customary independent and separate employer bargaining units.

The Board acted without warrant in law in assuming jurisdiction of the said invocation of the Trainmen in that said invocation by its language seeks from the Board an order certifying "the New York Central Railroad System" as a bargaining agent for the carriers leased, owned or controlled by the New York Central Railroad Company. The New York Central Railroad System is not an entity but a non-entity, and the Board could not designate it, had it the power under the law to make such determination, as a bargaining representative. Obviously, a non-entity cannot negotiate a contract of employment.

Par. 26. The yardmen employed on the Michigan Central constitute a separate craft or class of employees within the meaning of the Railway Labor Act. Likewise, the yardmen employed on the New York Central—Lines West constitute a separate craft or class of employees within the meaning of the Railway Labor Act. The Railway Labor Act neither permitted nor required the said Board to combine as it did in the said Findings and Order, election and certification; the said long established and customary independent and separate crafts or classes of employees with the yardmen employed on the Boston & Albany, Big Four, Ohio Central, and New York Central—Lines East, into one craft or class for the purpose of electing a single representative to represent all of the said independent and separate crafts or classes of employees in collective bargaining.

In view of the long continued and well established cus-

tom and practice of the yardmen on each, the New York Central—Lines West, and the Michigan Central, to bargain separately, and to negotiate and maintain separate schedules or agreements, the conclusion and holding of the Board that it was required or permitted by the Railway Labor [fol. 25] Act to combine the yardmen employed on the Michigan Central Railroad and on the New York Central—Lines West, with the yardmen employed on the Boston & Albany, Big Four, Ohio Central, and New York Central—Lines East, for the purpose of selecting a single representative for all of the yardmen so employed, is contrary to law, arbitrary, capricious and unreasonable. The provisions of the Railway Labor Act do not confer power upon the Board to change a long standing and existing custom in the railroad industry with respect to collective bargaining units.

Par. 27. Under the provisions of the Railway Labor Act, the Boston & Albany, the Big Four, the Ohio Central, the Michigan Central, the New York Central—Lines East, the New York Central—Lines West, and the other lessor and subsidiary lines comprising the New York Central System, are separate carriers within the meaning of Section 1, First, of the Railway Labor Act, the employees of each of which are to select their own representative according to the provisions of the said Act.

The provisions of the Railway Labor Act neither require, nor confer the power upon the Board, to combine as it did in the said Findings and Order, election and certification carriers or units of a railway system composed of lessor and subsidiary carriers long recognized by labor and management as appropriate bargaining units, and the action of the Board in selecting the New York Central Railroad Company as a bargaining unit for all yardmen employed on said separate carriers is contrary to law, arbitrary, capricious, null and void.

The provisions of the Railway Labor Act do not confer upon the Interstate Commerce Commission the power to determine what is a carrier for collective bargaining purposes except only in the instance of a street, suburban, or interurban electric railway. The Interstate Commerce Commission has not attempted to determine whether or not the New York Central Railroad Company as a single unit is a carrier for collective bargaining purposes, and the Board in basing its determination upon a practice followed

[fol. 26] by the Interstate Commerce Commission of receiving reports (operating reports) from the New York Central Railroad Company for the operation of certain of its leased, owned or controlled carriers, abandoned its independent discretion and thus acted arbitrarily, capriciously and contrary to law. The Board acted arbitrarily, capriciously and unlawfully in finding that the filing of operating reports with the Interstate Commerce Commission was conclusive as to the status of a carrier under the Railway Labor Act.

Par. 28. The said Findings and Order, the said election and the said certification are illegal, invalid, null and void, for the reason, among others, that the plaintiffs, and others similarly situated, have been deprived thereby, without due process of law in violation of the Fifth Amendment to the Constitution of the United States, of valuable seniority rights and the right to a representative of their own choice for collective bargaining purposes, and other valuable contractual and property rights, which rights they have long enjoyed in accordance with customary practice and long established precedent.

Par. 29. Plaintiffs further aver that unless this Court enjoins the defendants, and each of them, as hereinafter prayed, the plaintiffs, and each of them, and others similarly situated as yardmen in the employ of the Michigan Central Railroad Company and the New York Central Railroad Company—Lines West, will suffer and sustain irreparable injury and damage by reason of the aforementioned arbitrary, capricious and unlawful action of the defendant Board and the defendant members thereof, in that the plaintiffs, and each of them, and others similarly situated, will be denied representation of their own choosing in negotiating, entering into and maintaining agreements concerning hours, wages and working conditions, including seniority rights, with the New York Central Railroad Company—Lines West, and the Michigan Central Railroad Company, and in that the plaintiffs, and each of them, and others similarly situated, will be denied the right to preserve and protect seniority rights which they now have, and in that the [fol. 27] plaintiffs employed as yardmen on the Michigan Central and others similarly situated as yardmen in the employ of the Michigan Central will be denied the right granted them under the provisions of the Railway Labor Act and long established by precedent and custom to ne-

gotiate, enter into and maintain, as a separate group, working agreements concerning wages, hours and working conditions, including seniority rights, and will be denied the right to have an effective voice and vote in the determination of the said wages, hours and working conditions, including seniority rights, and likewise, the plaintiffs employed as yardmen on the New York Central Railroad Company—Lines West, and others similarly situated as yardmen in the employ of the New York Central Railroad Company—Lines West, will be denied the right granted under the provisions of the Railway Labor Act and long established by precedent and custom, to negotiate, enter into and maintain, as a separate group, working agreements concerning wages, hours, working conditions, including seniority rights, and will be denied the right to have an effective voice and vote in the determination of the said wages, hours and working conditions, including seniority rights.

Par. 30. The plaintiffs and each of them allege that they have no adequate remedy at law.

Wherefore, The Plaintiffs Pray:—

1. That this Honorable Court issue a Rule directed to the defendants National Mediation Board, George A. Cook, Otto S. Beyer and David J. Lewis, to show cause why they and each of them, their agents, officers and employees, pending final hearing and determination of this case and until further Order of this Court, should not be enjoined and restrained from investigating, by way of election or otherwise, a representation dispute affecting the yard employees of the Michigan Central Railroad Company and the New York Central Railroad Company—Lines West, and from issuing any certificate or in any other manner or by any other means naming the Brotherhood of Railroad Trainmen, or any person or persons, as the duly authorized and [fol. 28] designated representative of yardmen, consisting of foremen or conductors, helpers or brakemen, switch tenders and car retarder operators employed by the Michigan Central Railroad Company and the New York Central Railroad Company—Lines West.

2. That the defendants National Mediation Board, George A. Cook, Otto S. Beyer and David J. Lewis, and each of them, their agents, officers and employees be re-

strained and enjoined pending final hearing of this cause and permanently thereafter, from investigating by way of election or otherwise, a representation dispute affecting the yard employees of the Michigan Central Railroad Company and the New York Central Railroad Company—Lines West, and from issuing any certificate or in any other manner or by any other means naming the Brotherhood of Railroad Trainmen, or any person or persons, as the duly authorized and designated representative of yardmen, consisting of foremen or conductors, helpers or brakemen, switch tenders and car retarder operators employed by the Michigan Central Railroad Company and the New York Central Railroad Company—Lines West, pursuant to the Board's findings and Order of May 27, 1941, Case R-690, upon the invocation of the Trainmen of date July 2, 1940.

3. That the defendant Board and the defendant members thereof and their successors be forever enjoined from entering an Order directly or indirectly combining the yardmen employed on the New York Central—Lines West, and on the Michigan Central, with the yardmen employed on the Boston & Albany, the Big Four, the New York Central—Lines East, and the Ohio Central, as a single craft or class of employees with a single representative for the purpose of collective bargaining under the Railway Labor Act.

4. That the defendant Board and the defendant members thereof and their successors, be forever enjoined from entering an Order directly or indirectly combining the New York Central—Lines West and the Michigan Central with the Boston & Albany, the Big Four, the New York Central—Lines East, and the Ohio Central as a single carrier for col- [fol. 29] lective bargaining purposes under the Railway Labor Act.

5. That the findings of fact and conclusion of the Board in its determination of case R-690 of date May 27, 1941, be vacated, annulled and set aside.

6. That the Conclusion and Order of the Board in its determination in Case R-690 of date May 27, 1941, which reads as follows:

"The National Mediation Board, in view of all the evidence before it and the arguments presented to it in this case, has reached the conclusion that, since the New York

Central Railroad Company, and all of its operated subsidiaries, including the Boston & Albany Railroad Company, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, the Michigan Central Railway Company, and the Toledo and Ohio Central Railway Company, is a single carrier within the meaning of and subject to the Interstate Commerce Act as established by the Interstate Commerce Commission, and so also constitutes a single carrier for the purposes of the Railway Labor Act, all of the employees of any given craft or class, such as yardmen, in the service of a carrier so determined must therefore be taken together as constituting the proper basis for determining their representation in conformity with Section 2, Ninth, of the Railway Labor Act.

"The mediator assigned to the investigation of this dispute will therefore proceed accordingly with the completion of his duties in connection with the Board's investigation of this dispute. That is to say, he shall regard as the proper basis for the representation of the yardmen in the service of the entire New York Central Railroad Company all of the yardmen in such service.

By order of the National Mediation Board:"

be annulled, vacated and set aside.

7. That the certification issued October 22, 1941, by the National Mediation Board, certifying "that the Brotherhood of Railroad Trainmen has been duly designated and authorized to represent the craft or class of yardmen (con-[fol. 30] sisting of yard foremen or conductors, helpers or brakemen, switch tenders and car retarder operators), employed by the New York Central Railroad Company, for the purposes of the Railway Labor Act", be annulled, vacated and set aside.

8. That the defendants, Brotherhood of Railroad Trainmen, the New York Central Railroad Company, and the Michigan Central Railroad Company, and their respective officers, agents, representatives and employees, and each and all of them, be restrained and enjoined from, pursuant to the aforesaid certification heretofore issued by the Board on October 22, 1941, negotiating, entering into or maintaining an agreement or agreements covering wages, hours, rules or any working conditions, relative to yardmen employed on the New York Central Railroad Company—Lines West, and on the Michigan Central Railroad Company.

9. That the plaintiffs, and each of them, have such other and further relief as to this Honorable Court seems just and proper in the premises.

Henry B. Weaver, Jr., Tower Building, Washington, D. C.; Schradzke & Tierney, 33 N. LaSalle St., Chicago, Ill.; Leo F. Tierney, 608 Mercentile Trust Bldg., Baltimore, Md., Attorneys for Plaintiff.

Service of the within amended complaint acknowledged and copies received this 24th day of April, 1942.
[fol. 31] S. R. Brittingham, Jr., Special Assistant to the Attorney General, Attorney for National Mediation Board and Members Thereof; Alfred I. Bennett & B. M. Savage—A. B., Attorneys for Brotherhood of Railroad Trainmen; A. Rea Williams, Attorney for New York Central Railroad Company; A. Rea Williams, Attorney for Michigan Central Railroad Company.

[File endorsement omitted.]

EXHIBIT "A" TO AMENDED COMPLAINT

National Mediation Board

Washington

George A. Cook, Chairman; Otto S. Beyer, David J. Lewis, Robert F. Cole, Secretary.

Case No. R-690

Findings Upon Investigation

May 27, 1941

In the Matter of Representation of Employees of the New York Central Railroad Company

Yardmen (consisting of foremen or conductors, helpers or brakemen, switchtenders and car retarder operators)

In accordance with Section 2, Ninth, of the Railway Labor Act, as amended, the Brotherhood of Railroad Trainmen [fol. 32] (hereinafter referred to as the "Trainmen"),

under date of July 2, 1940, invoked the services of the National Mediation Board to investigate an alleged representation-dispute among employees constituting the craft or class of yardmen (consisting of foremen or conductors, helpers or brakemen, switchtenders and car retarder operators) in the employ of the "New York Central Railroad System." The Trainmen explained that by "New York Central Railroad System" it meant the New York Central-Lines East, the New York Central Lines-West; the Cleveland, Cincinnati, Chicago & St. Louis Railway; the Michigan Central Railroad; the Toledo and Ohio Central Railroad; and the Boston & Albany Railroad, as together constituting a single carrier, the New York Central Railroad Company, (hereinafter referred to as the "Railroad Company"), the craft or class of whose yardmen constitute a single undivided unit entitled, under the Railway Labor Act, to designate a representative for the purposes of the Act.

The Switchmen's Union of North America, (hereinafter referred to as the "Switchmen"), because of the fact that it represented yardmen in the service of the Railroad Company on some of its component lines or roads and at some of its yards, contested the request of the Trainmen.

The Board assigned Mr. P. D. Harvey, Mediator, to make an investigation of the alleged dispute on the ground. It developed after conferences with the representatives of the Trainmen and the Switchmen that no agreement could be reached between them as to whether all of the yardmen together in the service of the Railroad Company should be considered the basis for representation within the meaning of the Railway Labor Act or whether the yardmen should be permitted to continue to designate representatives by separate parts of the Railroad Company substantially as reflected by the agreements covering yardmen in effect between the Switchmen and various component lines or roads of the Railroad Company.

Because of the inability of the mediator to harmonize the views of the representatives of the Trainmen and the [fol. 33] Switchmen on this question, the Board, after having concluded that a dispute over representation did in fact exist among the yardmen here concerned, ordered a public hearing to be held so as to give all interested parties opportunity to present pertinent data, evidence, and argument in support of their respective positions and to submit briefs. This hearing was held at the offices of the Board in Wash-

ington, D. C., on February 20 and 21, 1941. The contesting parties were represented by counsel. Representatives of the Brotherhood of Locomotive Firemen and Enginemen, and the Railway Employes' Department, American Federation of Labor, also appeared. A representative of the Railroad Company was present at the invitation of the Board for the purpose of giving such factual information bearing on the issue as the Board might request. Briefs were filed with the Board by counsel for the Trainmen and the Switchmen, and, in addition written statements were submitted on behalf of the Brotherhood of locomotive Firemen and Enginemen, the Railway Employes' Department, American Federation of Labor, and the Order of Railroad Telegraphers.

Issues

The Trainmen contend that the various lines of roads constituting the Railroad Company are not separate and independent operating units or carriers as they were before becoming consolidated under the Railroad Company, but that such lines now constitute a single carrier, managed under a plan of consolidation by the Railroad Company, effected by acquisition thru leases of the properties or by purchase of the capital stock of the companies owning the separate lines of road concerned and the integration of these separate properties and roads into a single railway transportation system controlled and operated by the Railroad Company; that this system as a whole is a single "carrier" within the meaning of the Railway Labor Act; and that, in view of Sections 1, Sixth, and 2, Fourth and Ninth of the Act, the Board is bound to include in the eligible list [fol. 34] all the employees of a craft or class of such a carrier for the purpose of determining their representative.

The Switchmen contend that various separate properties or lines operated by the Railroad Company are separate carriers for the purpose of representation within the meaning of the Railway Labor Act; that the Act permits the Board, in its discretion, to divide a "carrier" into geographical areas, separate lines, or regions and that the employees embraced within a class or craft in the service of the railroad Company of each such line or region constitute separate crafts or classes of employees for purpose of representation.

Argument of Parties

The arguments of the parties as presented in their briefs are quoted in part as follows:

Brief of Brotherhood of Railroad Trainmen—pp. 18 and 19

"1. Summary of ideas involved.

There is but one statutory interpretation of the term "Carrier" and that is a finding that it is a single operating unit, covering territorially, the Company and its directly controlled leased lines, governing employees in their relations with management.

"2. The Interstate Commerce Commission has heretofore classified the employer unit which was the cause which resulted in the Carrier filing a single unified operating report (result) such finding being supported by substantial evidence, is conclusive on courts and this Board.

"3. The Board in a long line of decisions has necessarily followed the principle of this interpretation.

"4. Chaos, confusion and unrest would follow any adverse or conflicting interpretation.

"5. The Status Quo should be maintained.

"6. A basic principle of the Act is that employees be represented to protect them and the public. They are well represented.

[fol. 35] "7. Majority representation for collective bargaining is the heart and core both of unionism and democratic rule.

"8. The Board has held present agreements are not altered by a change in representation.

"9. An employee joining a group impliedly assents to yield loyalty to any group which may become the majority.

"10. The cause of unrest and the dispute, shown to exist at Detroit, and Toledo, should be removed, if possible in its early stage, by certification.

"11. The majority is substantial in numbers.

"12. Minority groups are protected by the Act.

"13. The issue covers only legislative bargaining, leaving all other matters unehanged. No inequality results to the minority which always has a chance to become a majority.

"14. The evidence abundantly supports a certification."

The Trainmen also referred to decisions of the Board in Representation cases R-148, R-155, R-229, R-248 and R-263, summaries of which are given later in the opinion.

Brief of the Switchmen's Union of North America—pp. 3 and 4

"1. The position of the Brotherhood of Railroad Trainmen is opposed to the basic principles of the Railway Labor Act.

"2. No bona fide representation dispute exists among the employees in question.

"3. Yardmen employed on the Michigan Central at and west of Detroit and on certain yards of the New York Central Lines West, constitute separate crafts or classes of employees.

"4. The properties here involved are separate carriers within the meaning of the Railway Labor Act.

"5. The position of the Brotherhood of Railroad Trainmen is not one which should appeal to the statutory discretion of the Board.

[fol. 36] "The Brotherhood of Railroad Trainmen is well aware that it controls a clear majority of all of the yardmen of the System." (p. 2 par. 3).

"It appears, therefore, that this proceeding is in effect an effort of one standard labor organization to oust another similar organization from a jurisdiction long held by it and honorably exercised. There is no pretense that the Switchmen's Union of North America has been derelict in its duties or that the Brotherhood of Railroad Trainmen is capable of improving the caliber of representation now secured by these employees. The only intent is to make use of a technical opportunity which it claims is afforded by certain provisions in the Railway Labor Act for the purpose of strengthening one organization at the expense of the other." (p. 3 par. 2).

The Switchmen also cite previous representation certifications in cases R-113, R-161, R-452, R-460 and R-570, applicable to segments of the New York Central Railroad, which have been issued by the Board, contending that they should serve as precedents in deciding the controversy now before the Board. Comments upon these cases will appear later in the opinion.

Statements Submitted by Intervening Organizations

The Brotherhood of Locomotive Firemen and Enginemen, intervener, in its statement contends:

"First, does the Railway Labor Act require the Board to promote system-wide classification of employees? That is to say, does the Act make it the duty of the Board to group all the employees of a railroad system engaged in the same type of work into one class or craft for representation purposes?

"Second, if the Railway Labor Act does not require a system-wide classification of employees, does the Railway Labor Act authorize or permit the National Mediation Board to change the existing classes or crafts of employees as the same are embodied in working agreements, and [fol. 37] foster or promote system-wide classification of employees, without regard for the wishes of the employees involved?

"Third, If the Railway Labor Act does in fact vest the Board with such authority, would it be advisable as being in the best interests of the employees for the Board to promote such a policy of classification? (p. 4).

"Sec. 2, Ninth, provides that the National Mediation Board when investigating a representation dispute may conduct an election to determine the choice of a majority for a representative and 'in the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules governing the election.' The authority thus vested in the Board to designate who may participate in an election cannot reasonably be construed as an authorization to the Board to establish or define what shall constitute classes or crafts of employees." (pp. 5 and 6).

This intervener also refers to two cases decided by the Federal Courts, dealing with the question as to what is a craft or class.[1] The intervener interprets these decisions as authorizing or even requiring the splitting of a craft or class of employees on a carrier, if in fact such separate groups ordinarily composing a craft or class had already become established historically or it should appear desirable to so establish them in the view of desires of a majority of the employees constituting such separate divisions of a craft or class.

The Railway Employes' Department of the American Federation of Labor, another intervening party, in its statement contends that it is within the power of the Board to recognize subdivisions of a class or craft upon a given carrier as determined, for example, by the scope of agreements already in effect on a carrier. The Department fur- [fol. 38] ther asserted that serious difficulties might arise if existing groupings of employees on this basis were disturbed.

The Order of Railroad Telegraphers, in letters to the Board dated April 10 and 14, 1941, stated it did not wish to intervene but did wish to express opposition to the New York Central Railroad Company and its subsidiaries being considered together as a single carrier unit for representation purposes under the Railway Labor Act, if such a determination would form a precedent to affect The Order of Railroad Telegraphers in any jurisdictional dispute which may arise in the future between the Order and any other organization.

In addition to the briefs and statements of the parties and interveners above referred to, the Exhibit statement of Mr. J. G. Walber, Vice President of the Railroad Company was considered.

Findings of Fact.

Upon the record before it, the National Mediation Board finds as follows:

1. The New York Central Railroad Company is an independent carrier by railroad which operates approximately

[1] BRT vs. National Mediation Board—88 Fed. Rep. (2) 757 (1936) Brotherhood of Railway and Steamship Clerks, Freight Handlers, etc. vs. Nashville, Chattanooga & St. Louis R. R. Co., 94 Fed. Rep. (2) 97 (1937).

11,070 miles of road [1] and is a unification of many separate corporations. In addition to the line directly owned by the New York Central Railroad Company, which is approximately 3,737 miles of road, it operates all of the remaining mileage identified with it mostly through long term leases or majority stock ownership. Among the railroad companies thus operated are the Boston and Albany Railroad Company, which owns 275 miles of road; the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, which owns 2,324 miles of road, The Michigan Central Railroad Company, which owns 1,085 miles of road, and The Toledo and Ohio Central Railway Company, which owns 653 miles of road. Each of these lessor companies has long term leases on a number of smaller railroads which are now oper- [fol. 39] ated under the lease between the intermediate lessor company and the New York Central Railroad Company. The New York Central Lines East and the New York Central Lines West have no corporate operating identities but are merely operating regions of the New York Central Railroad.

The leases between the New York Central Railroad Co. (the parent company) and the Michigan Central Railroad Company, and Cleveland, Cincinnati, Chicago and St. Louis Railway Company, are for 99 years and became effective February 1, 1930. The lease between the parent company and the Boston and Albany Railroad Company is also for 99 years and became effective July 1, 1900. The Toledo and Ohio Central Railway Company was leased by the parent company January 1, 1922, which arrangement is to continue for the corporate existence of the lessor company. The parent company owns a controlling stock interest in all of the lessor companies.

2. The number of yardmen employed by the Railroad Company is approximately 6,087, which, according to agreements on file in the offices of the National Mediation Board, are now represented on the following portions of the Company's line by the contesting organization here involved.

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[1] I. C. C. Statistics of Railways of the United States, 1938, pp. 220 and 221 I. C. C. Finance Docket 5790—Vol. 150 pp. 278-329.

[fol 40]	Switchmen's Union of North America	Brotherhood of Railroad Trainmen
	Yards at—	
	Dunkirk, Ohio	Youngstown, Ohio
	Erie, Pa.	Sharon, Pa.
	Ashtabula, Ohio	Elkhart, Ind.
	Ashtabula Harbor Ohio	South Bend, Ind.
	Cleveland, Ohio	LaPorte, Ind.
	Cleveland Passenger Yard	Alliance, Ohio
	Elyria, Ohio	Minerva, Ohio
	Sandusky, Ohio	Kankakee, Ill.
New York Central— West of Buffalo	Toledo, Ohio	Lyons Yards, Ill.
	Toledo Passenger Yard	
	Detroit, Mich.	
	West Detroit	
	Adrian, Mich.	
	Monroe, Mich.	
	Ft. Wayne, Ind.	
	Grand Rapids, Mich.	
	Kalamazoo, Mich.	
	Lansing Yards, Mich.	
	Jackson, Mich.	
Michigan Central Railroad	All yards West of Detroit River, including South Bend Transfer Crews	All Yards East of Detroit River
New York Central— East of Buffalo	(None	All Yards
Toledo & Ohio Central	(None	All Yards
C. C. C. & St. L. Ry.	(None	All Yards
Boston & Albany Railroad	(None	All Yards

3. The number of yardmen employed on the various lines of the Railroad Company as reported for the middle of November, 1940, by the management to the Inter-state Commerce Commission, are as follows:

	NYC Lines East	NYC Lines West	Toledo & Ohio Central	Michigan Central	Cleveland, Cincinnati Chicago & St. Louis	Boston and Albany	Total
Yard conductors, including car retarder operators	568	337	63	282	216	65	1,531
Yard brakemen	1,413	854	171	725	616	134	3,913
Switchtenders	300	171	11	65	56	40	643
	2,281	1,362	245	1,072	888	239	6,087

[fol. 41] 4. The number of signed authorizations from yard conductors, including car retarder operators, yard brakemen, and switchtenders, submitted to the Board by the Brotherhood of Railroad Trainmen are as follows:

	NYC Lines East	NYC Lines West	Toledo & Ohio Central	Michigan Central	Cleveland, Cincinnati Chicago & St. Louis	Boston and Albany	Total
Authorizations	2,129	774	374	479	779	214	4,749

5. In so far as the train and engine service employees of the Railroad Company are concerned, they are covered by separate agreements for the New York Central Lines East, the New York Central Lines West, the Toledo and Ohio Central, the Cleveland, Cincinnati, Chicago and St. Louis, the Michigan Central, and the Boston and Albany. In addition, there are train and engine service basic wage rates and rules agreements confined solely to employees concerned on the Illinois Division of the New York Central.

The territorial scope of agreements covering employees represented by The Order of Railroad Telegraphers is similar to that of train and engine service employees in that there are separate basic agreements covering the New York Central-Lines East, the New York Central-Lines West, and also the Toledo and Ohio Central. The agreements held by the Brotherhood of Railroad Signalmen of America have a slightly different territorial scope. There is only one signalmen's agreement covering the New York Central-Lines East, and another covering the New York Central Lines West, including the Toledo and Ohio Central. For the employees represented by both the Order of Railroad Telegraphers and the Brotherhood of Railroad Signalmen of America there are separate agreements covering the Boston and Albany; Cleveland, Cincinnati, Chicago, & St. Louis; and the Michigan Central respectively.

The Railroad Yardmasters of North America hold three agreements covering yardmasters on the New York Central: One covers yardmasters on the Lines East, the second covers the Lines West, and the third covers Michigan Central. [fol. 42] The Yardmasters on the Toledo and Ohio Central are under an agreement held by the Trainmen. The Yardmasters on the Boston and Albany are not covered by a labor agreement, and on the Cleveland, Cincinnati, Chicago and St. Louis, there is a yardmasters' agreement in effect with the Big Four Yardmasters' Association.

Agreements applicable to other employees of the company have still a different territorial scope. The crafts or classes of employees represented by the seven shop craft organizations which function through the Railway Employes' Department, A. F. of L., the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, the Brotherhood of Maintenance of Way Employes, and the American Train Dispatchers' Association, have agreements covering the employees on Lines East and

Lines West of the New York Central, as well as the Ohio Central Lines. For the other lessor companies, namely, the Boston and Albany, the C. C. C. & St. L. and The Michigan Central, however, these organizations have separate agreements covering the crafts or classes of employees which they represent.

For employees in the Dining Car service there is one agreement covering all stewards on the entire Railroad Company. For cooks and waiters there are three agreements; one of these covers cooks and waiters on the Boston and Albany, the other cooks and waiters on the New York Central-Lines East, and the third these same employees on the New York Central-Lines West, the C. C. C. & St. L., and the Michigan Central.

6. In the operation of the Railroad Company, common executives serve both the New York Central and the subsidiary companies and coordinate activities where the use of more than one part or line of the system is involved. For instance, the Executive Vice President coordinates the activities of the mechanical and maintenance of way departments in order to secure the most efficient use of the shops and uniformity of standards and practices. Train service [fol. 43] coordination is subject to the jurisdiction of the managers of Passenger Transportation and Freight Transportation. These officials plan and supervise the through passenger and freight service respectively affecting all of the Lines.

Exemplary of the coordination of the work performed on the various properties is the fact that the jurisdiction of the operating superintendent at Toledo includes the entire Toledo Terminal in which is included portions of the Michigan Central, The New York Central-Lines West, and the Toledo and Ohio Central. The Superintendent of the Western Division has jurisdiction not only over the Illinois Division of the New York Central—Lines West, but also over the Western Division of the Michigan Central, the Michigan Central yards in Chicago, and the C. C. C. & St. L. yards at Danville, Illinois. The timekeeping department which handles payrolls for New York Central-Lines West also performs this function for the Michigan Central, the C. C. C. & St. L., and the Toledo & Ohio Central, and is located at Detroit, Michigan. Payrolls for New York Central—

Lines East and the Boston and Albany are prepared at Utica.

7. Negotiations between management and representatives of the employees and subject to the general supervision of the Vice President-Personnel, whose principal function is to serve in an advisory capacity to the responsible officials of the different properties. In some cases, however, the Vice President-Personnel has participated in actual negotiations for changes in rules or working conditions applicable only to the Michigan Central or the C. C. C. & St. L.

Because of the changes and gradual extension of the jurisdiction of the several bureaus which handle employee grievances at various locations on the Railroad Company, it has been necessary for the Chairman of the General Grievance Committee of the Trainmen on the New York Central Lines-West to handle his cases with five separate bureaus located respectively at Chicago, Cleveland, Cincin- [fol. 44] nati, Detroit and Syracuse. In some cases, the handling of grievances on the property by the employees has been concluded with the bureau or the vice president located at the particular point. In other cases the employees have carried the handling of grievance cases to the Vice President-Personnel as the highest officer of the Company designated to handle such disputes, before submitting them to the National Railroad Adjustment Board.

8. There have been several instances of merging of seniority rosters of yardmen in the service of the constituent lines or companies of the parent company. One such instance is where the rosters of yardmen on the Michigan Central were set behind the rosters of the yardmen on the New York Central West of Toledo. As a result any new yardmen hired thereafter would have seniority on both the New York Central and the Michigan Central. Similarly, New York Central Yardmen were included in the rosters of Michigan Central yardmen located at Detroit, Lansing and Jackson, Michigan.

9. Gradually over a number of years and especially since 1935, engine numbers on the C. C. C. & St. L. locomotives have been changed to correspond with New York Central locomotive numbers. Similarly, the numbers on box cars and other equipment including supply cars that do not leave the lines of the C. C. C. & St. L. have had their numbers

changed to correspond to New York Central numbers. Locomotives and cars are exchanged betwe-n the New York Central and the C. C. C. & St. L. with no per diem being charged for the cars.

Discussion

The Railway Labor Act defines the term 'carrier' as follows:

"Section 1, First:

"The term 'carrier' includes any express company, sleeping car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or [fol. 45] indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such 'carrier.'"

The following provisions of the statute are directly applicable to the case under consideration:

"Section 1, Sixth:

"The term 'representative' means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them."

"Section 2, Fourth:

"Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

"Section 2, Ninth:

"If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements

of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its service, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the car- [fol. 46] rier shall treat with the representative so certified as the representative of the craft or class for the purposes of the Act. * * * In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election * * *."

Since it has been shown that the Railroad Company, with its subsidiaries, is a single carrier in fact under the Railway Labor Act, the Board now reaffirms the conclusions reached by it as to the legal consequences of such a fact as announced in its First Annual Report for the fiscal year ended June 30, 1935.

"What is a carrier?—Although the term 'carrier' is clearly defined in the Act, questions have arisen in connection with representation disputes which made it necessary for the Board to interpret its meaning. Where a railroad system is composed of a number of subsidiary corporations, employees have been in dispute as to whether one vote should be taken of a craft on the whole system or whether the subsidiary corporations are carriers within the meaning of the Act whose employees are entitled to separate representation. The Board has ruled generally that where a subsidiary corporation reports separately to the Interstate Commerce Commission, and keeps its own payroll and seniority rosters, it is a carrier as defined in the Act, and its employees are entitled to representation separate from other carriers who may be connected with the same railroad system.

"If the operations of a subsidiary are jointly managed with operations of other carriers and the employees have also been merged and are subject to the direction of a single management, then the larger unit of management is taken to be the carrier rather than the individual subsidiary companies." (p. 22, First Annual Report—National Mediation Board."

[fol. 47] The above statement as to the application of the law to the subject of representation has been followed since its first announcement and has consistently been adhered to by the Board in representation cases where the parties were in dispute on this question, to some of which the Trainmen give reference. The following brief review of the more important cases acted upon by the Board since 1934 confirms this observation.

R-74. On November 15, 1934, the Switchmen invoked the services of the Mediation Board, advising that a dispute existed as to representation of switchmen employed in the Buffalo and Cleveland Yards of the N. C. & St. L. Railroad. The Board denied its request, contending that the two years could not be separated but that all of the yards of the N. C. & St. L. Railroad which report to the Interstate Commerce Commission as a carrier, would have to be included in any representation dispute under Section 2, Ninth, of the Act.

R-101. On December 11, 1934, the Trainmen invoked the services of the Board in a representation dispute among yardmen employed by the Chicago & Eastern Illinois Ry. Co. The carrier had an agreement with the Switchmen covering yardmen and contended that for a great number of years it had had separate contracts in effect with the two organizations covering certain portions of the railroad and that it would not agree that representation of yardmen should be determined by a vote of all the yardmen on the railroad when advised that a dispute existed covering representation of yardmen in the Chicago Terminal only. The Board, however, under its interpretation of the Act, voted all the yardmen in service of the carrier, and under date of May 18, 1935, issued a certification that the Trainmen as a result of the election was authorized to represent the employees of the Chicago & Eastern Illinois Ry. Co.

R-204. On October 11, 1935, the Switchmen invoked the services of the Board in a representation dispute involving [fol. 48] yardmen employed by the Chicago, Great Western Railroad. The carrier advised that it had had contracts with the Switchmen covering yardmen in certain yards on the property; that it had not received a request from either organization to extend contracts to include yards

where the other organization then held the contract, and it assumed that the dispute was one between the Switchmen and the Trainmen. However, the Board ordered an election and on December 24, 1935, issued a certification designating the Switchmen as representative of all yardmen employed by the Chicago Great Western Railroad, as a result of the election.

R-148. Invocation filed by the Switchmen for representation of all yardmen on D. L. & W. At that time the yardmen at some points were represented by the Switchmen and at others by the Trainmen. All yardmen on the entire property were voted and the result favored the Trainmen.

R-155. Invocation filed by the Trainmen for representation of all yardmen on the Lehigh Valley Railroad. It held representation for all yardmen of the carrier except at Buffalo where the Switchmen held representation. After investigation the Board ordered all yardmen of the entire carrier to be voted. Results of the election favored the Trainmen and they were certified as representative.

R-229. Involving Soo Line yardmen is similar to some of the other cases cited by the Trainmen. At the time of the invocation it represented all of the Soo Line yardmen except those employed in Chicago, which were represented by the Switchmen. The vote was conducted over the entire system.

R-248. Invocation by Brotherhood of Maintenance of Way Employes to represent all maintenance of way employees on the N. C. & St. L. It represented all employees of this craft or class on the carrier except those on the Clover Leaf District. Because there were only 477 employees on that district and on the remaining districts [fol. 49] there were approximately 1600 employees, the Board ruled there can be no doubt of the majority. Accordingly the Brotherhood of Maintenance of Way Employes was certified for the entire carrier.

R-263. In this case the Trainmen applied for representation of stewards on the New York Central Railroad, comprising Lines East and West, the C. C. C. & St. L. and the Michigan Central. The Boston & Albany was not included because the Trainmen already represented the ste-

wards on that line. Vice President Walber of the carrier advised that dining cars were operated on the Boston & Albany as a separate railroad. The election was held covering all the lines listed in the application regardless of some protests from the Hotel & Restaurant Employees Association which held there was no dispute on New York Central Lines West. A hearing at which both sides presented evidence indicated to the Board that its action in conducting the election was proper.

Neither the Trainmen nor the Switchmen contended in any of these cases that a system election of the railroad should not have been held because of existing contracts for specific yards then in effect with each of the organizations concerned.

In another case (R-100), where the Railway Employes' Department, A. F. of L., invoked the services of the Board in a representation dispute among Long Island Railroad shop craft employees, the Pennsylvania Railroad argued that for a number of years one agreement had been in effect covering the shop employees of the Pennsylvania and Long Island Railroads. The Board held that a separate vote should be taken of Long Island shopmen for the reason that the Long Island Railroad was a separate carrier within the meaning of the Railway Labor Act, since it reports separately to the Interstate Commerce Commission.

To recognize that the scope of agreements in effect in 1934 or since should be controlling in arriving at what [fol. 50] constitutes a craft or class of employees would in many instances be contrary to the provisions of law recognizing "majority rule" and would perpetuate representation on the basis of minorities.

The Switchmen refer to five previous representation certifications applicable to segments of the Railroad Company, which have been issued by the Board, as supporting their view that the Board possesses discretion under the law to make such subdivisions. The following summaries give the facts briefly as regards the five certifications cited by the Switchmen.

R-113. Order of Railway Conductors vs. Trainmen (Invocation by O. R. C. for representation of yard conductors, car retarder operators and switchtenders, employees of C. C. C. & St. L. Ry.) The Board raised the question with O. R. C. as to the inclusion of the New York Central,

but acquiesed in O. R. C.'s claim that the C. C. C. & St. L. was entitled to consideration as an independent carrier, there being no disagreement between the contesting organizations on the question.

R-161. Railroad Yardmasters of North America v. Trainmen. (Invocation by Railroad Yardmasters of North America for representation of yardmasters on Ohio Central Division, New York Central-Lines West.) After investigation was under way RYNA requested an enlargement of its invocation to include all employees assigned as yardmasters on all New York Central Lines West. The Board did not grant the request but advised RYNA that the only carrier involved in the dispute was the Ohio Central Division. There was no disagreement between the contesting organizations as to what constituted a "carrier" in this dispute.

R-452 Trainmen vs. Order of Railway Conductors. (Invocation by Trainmen for representation of road conductors on the Boston & Albany Railroad.) The question of whether Boston & Albany is a separate carrier was not raised and both parties agreed upon the list of eligibles.

[fol. 51] R-460. Order of Railway Conductors vs. Trainmen. (Invocation by O. R. C. for representation of road brakemen, flagmen and baggagemen on the Boston & Albany Railroad.) The question of whether the Boston & Albany is a separate carrier was not raised and both parties agreed upon thel ist of eligibles.

R-570. International Brotherhood of Firemen, Oilers, etc. vs. International Union of Operating Engineers and Brotherhood of Maintenance of Way Employes. (Invocation by International Brotherhood of Firemen and Oilers for representation of power house employees and railway shop laborers of the Boston & Albany Railroad.) Dispute arose on question of occupation to be included in eligible list. No question was raised as to whether the Boston & Albany is a separate carrier.

With reference to the argument of the Switchmen based on the issuing of certificates of representation applying only to the employees in the service of a particular territorial division, region or part of the Railroad Company, the Board must again direct attention to the circum-

stances that in those cases, eligible lists had been agreed upon between the contending parties. In none of these cases was there a controversy over the issue of law as now raised in this case.

Indeed with reference to the New York Central Railroad Company itself in answer to a letter of Mr. Walber, with reference to Case R-161, the Board writes as of February 17, 1937, as follows:

"It has been the view of the Board that where a dispute exists within a class or craft, the law gives us no discretion, but to make a determination of choice of representative for the entire class or craft for the entire railroad involved regardless of presently existing agreements, unless all parties to the present dispute agreed otherwise. The controlling ruling in this regard was made in the Nickel Plate case where the Switchmen's Union of North America sought to take over the representation of [fol. 52] the men employed in the Buffalo and Cleveland yards. I am attaching a copy of our ruling in that matter. Of course, all the parties can agree to divide up the System for the purpose of separate agreements but if any one dissents from that view the determination must be made for the entire group and the entire System."

As the Board views the subject under consideration, it feels bound to conclude that no issue has been raised in this case as to what is a craft or class under the Railway Labor Act. There is no dispute that the class or craft of 'yardmen' embraces foremen or conductors, helpers or brakemen, switchtenders and car retarder operators. The issue actually raised is simply a question as to whether this craft or class of 'yardmen' may be broken into separate groups on the Railroad Company with a resulting right in any group to demand separate group representation. In the two court cases referred to (B. R. T. vs. National Mediation Board, 88 Fed. (2) 757, and Brotherhood of Railway & Steamship Clerks, etc. v. Nashville, Chattanooga & St. Louis R. R. Co. 94 Fed. (2) 97), the question before the Courts involved the subject of what constituted a class or craft but did not involve the splitting of a well recognized craft or class of employees essentially along geographical lines, i. e., by yards, divisions, subsidiary roads or companies, or regions of a parent operating company.

In further elaboration of its opinion on the subject as given in the First Annual Report, the Board is of the view that the idea of collective bargaining with a carrier denotes the collective participation of all the carrier's employees included in a single craft or class in its negotiations with the carrier by the method of representation. The word 'collective' denotes singleness of agency in the same sense as the phrase 'e pluribus unum' symbolizes the national unity of the States. It connotes not a part or parts of a subject but a collection of all the parts into one body, which [fol. 53] applied in the case before us, means singleness of representation with a single carrier. On this point the Act seems literally definite as it reads:

"The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of the Act."

Note that the Act speaks of a majority of a craft or class determining "who shall be the representative" (not the representatives). The subjects "craft or class" and "representative" are both given in the singular number.

The Board does not undertake to discuss the relative advantages or disadvantages which may inhere in single or divided representation respectively. Doubtless serious arguments may be made both for and against each method. The Act leaves the Board in no doubt that Congress had in mind single representation for each craft or class on each carrier when enacting it; and that had the Congress thought of sub-divisions of a craft or class or of a carrier as desirable methods of representation it would have made provision for their use.

Finally, the Board concludes as a matter of law that the Railway Labor Act vests the Board with no discretion to split a single carrier or combine two or more carriers for the purpose of determining who shall be eligible to vote for a representative of a craft or class of employees under Section 2, Ninth, of the Act, and the argument that it has such power fails to furnish any basis of law for such administrative discretion.

Conclusion

The National Mediation Board, in view of all the evidence before it and the arguments presented to it in this case, has reached the conclusion that, since the New York Central

Railroad Company and all of its operated subsidiaries, including the Boston & Albany Railroad Company, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, the Michigan Central Railroad Company, and the Toledo and Ohio Central Railway Company, is a single carrier within [fol. 54] the meaning of and subject to the Interstate Commerce Act as established by the Interstate Commerce Commission, and so also constitutes a single carrier for the purpose of the Railway Labor Act, all of the employees of any given craft or class, such as yardmen, in the service of a carrier so determined must therefore be taken together as constituting the proper basis for determining their representation in conformity with Section 2, Ninth, of the Railway Labor Act.

The mediator assigned to the investigation of this dispute will therefore proceed accordingly with the completion of his duties in connection with the Board's investigation of this dispute. That is to say, he shall regard as the proper basis for the representation of the yardmen in the service of the entire New York Central Railroad Company all of the yardmen in such service.

By order of the National Mediation Board:

(Signed) Robert F. Cole, Secretary.

EXHIBIT "B" TO AMENDED COMPLAINT

National Mediation Board, Washington

David J. Lewis, Chairman
George A. Cook
Otto S. Beyer
Robert F. Cole, Secretary

In the Matter of Representation of Employees of the New York Central Railroad Company

Yardmen (Consisting of Yard Foremen or Conductors, Helpers or Brakemen, Switchtenders and Car Retarder Operators)

Filed Apr. 24, 1942

Case No. R-690 Certification October 22, 1941

The services of the National Mediation Board were invoked by the Brotherhood of Railroad Trainmen to settle [fol. 55] a dispute as to who may represent yardmen (con-

sisting of yard foremen or conductors, helpers or brakemen, switchtenders and car retarder operators), employed by the New York Central Railroad System, for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof. Later in open hearing the Brotherhood of Railroad Trainmen explained that by the term "New York Central Railroad System" it meant the lines operated by the New York Central Railroad Company but not other portions of the System. The records of the Board show that at the time application was received these employees in all yards west of the Detroit River on the Michigan Central Line, including South Bend transfer crews, were represented by the Switchmen's Union of North America; that the employees on the New York Central (Lines West of Buffalo) were represented in certain yards by the Brotherhood of Railroad Trainmen and in certain other yards by the Switchmen's Union of North America; and that the remainder of the employees in the craft or class employed by the New York Central Railroad Company were represented by the Brotherhood of Railroad Trainmen.

The Board assigned Mr. Patrick D. Harvey, Mediator, to investigate. It developed after conferences with the representatives of the Brotherhood of Railroad Trainmen and the Switchmen's Union of North America that no agreement could be reached between them as to what constituted the proper basis for determining representation of the employees concerned under the Railway Labor Act. Since the parties could not be brought into agreement on this issue a hearing was held by the Board in Washington, D. C., on February 20 and 21, 1941, so as to permit them to present pertinent facts and arguments and submit briefs in support of their positions on the issue involved before the Board made any determinations in the matter. On the basis of this hearing, the National Mediation Board on May 27, 1941, issued a Findings Upon Investigation, in which it reached the conclusion that, since the New York Central Railroad [fol. 56] Company operates all of the lines formerly operated by the Boston and Albany Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, the Michigan Central Railroad Company, and the Toledo and Ohio Central Railroad Company, all of the employees in the craft or class of yardmen in the service of the New York Central Railroad Company must be taken together as constituting the proper basis for determining their

representation in conformity with Section 2, Ninth, of the Railway Labor Act. The Board thereupon found that a dispute over representation existed among these employees and directed Mediator Harvey, assisted by Mediators Bronson and Roulfs, to take a secret ballot to determine their choice.

Following is the result of the election as reported by Mediator Harvey and attested to by the representatives of the contesting organizations who acted as observers:

Number of employees voting for contesting organizations:

	For Brotherhood of Railroad Trainmen	For Switchmen's Union of North America	For other organizations or individuals	Void ballots	Number of employees eligible to vote
Yardmen (Consisting of Yard Foremen or Conductors, Helpers or Brakemen, Switchtenders and Car Retarder Operators)	4112	941	152	55	7187

On the basis of the investigation and report of election the National Mediation Board hereby certifies that the Brotherhood of Railroad Trainmen has been duly designated and authorized to represent the craft or class of yardmen (consisting of yard Foremen or conductors, helpers or brakemen, switchtenders and car retarder operators), em-[fol. 57] ployed by the New York Central Railroad Company, for the purposes of the Railway Labor Act.

By order of the National Mediation Board:

Robert F. Cole, Secretary.

In United States District Court

Amended Answer of the Defendants, National Mediation Board, Cook, Beyer and Lewis—Filed May 9, 1942

Come now the defendants, National Mediation Board, George A. Cook, Otto S. Beyer and David J. Lewis, and for answer to the amended complaint herein respectfully state:

1. These defendants admit the allegations contained in Paragraphs 2, 3, 4, 5, 7, 8, 10, 11, 17, 18, 19, 20 and 30.

2. These defendants deny the allegations contained in Paragraphs 24, 25, 26, 27 (except the first sentence of the last sub-paragraph thereof, the allegations of which is admitted), 28 and 29.

3. These defendants admit the allegations contained in the first sub-paragraph of Paragraph 1 but deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sub-paragraph of Paragraph 1.

4. These defendants admit the allegations of Paragraph 6 except that they aver that the defendant George A. Cook is no longer Chairman of the National Mediation Board, and aver further that the position of Chairman is now held by the defendant David J. Lewis.

5. These defendants admit the allegations contained in Paragraph 9 of the complaint except that they deny knowledge as to whether or not a majority of the members of the Brotherhood of Railroad Trainmen are engaged in road service.

6. These defendants admit the allegations of the first sub-paragraph of Paragraph 12 but deny the remaining allegations of said paragraph.

[fol. 58] 7. These defendants admit the allegations contained in the first sub-paragraph of Paragraph 13, except the last sentence thereof.

These defendants admit the allegations of the second sub-paragraph of Paragraph 13 and the lettered paragraphs (a) to (d) thereunder.

For answer to the remaining allegations of Paragraph 13, these defendants admit that the lessor or subsidiary companies operated by the New York Central Railroad Company, including the Boston & Albany, the Big Four, Michigan Central, and Peoria & Eastern, furnish to the Interstate Commerce Commission separate annual financial reports and that said companies and the New York Central — Lines East and — Lines West furnish separate monthly accident reports, but aver that the annual financial reports so filed by said lessor or subsidiary companies contain no operating data, and aver further that the monthly accident reports are accepted by the Interstate Commerce Commission on a separate rather than consolidated basis in order to provide accident data for the various portions of the New York Central Railroad Company for use in connection with the promotion of safety. These defendants aver that this is a customary practice of the Interstate Commerce Commission

with respect to the reporting of accident statistics, and that a similar method is followed by other large railways such as the Pennsylvania Railroad Company, Southern Railway Company, and the Union Pacific Railroad. These defendants further aver that the New York Central Railroad Company files an annual report with the Interstate Commerce Commission which covers the operations of its own property and of the properties of its various leased lines, and that said leased lines file no operating report with the Interstate Commerce Commission; and these defendants further aver that the annual financial and monthly accident reports filed with the Interstate Commerce Commission on behalf of the lessor companies are prepared and signed by officers com- [fol. 59] mon to both the New York Central Railroad Company and said lessor companies.

These defendants further aver that the New York Central Railroad Company also files numerous monthly and quarterly reports disclosing the results of operations over its own and all of its leased lines, and that none of the lessor companies files any such reports except the Boston & Albany, from which company certain of such reports are required by the Interstate Commerce Commission because of the importance of the road in connection with statistics relating to the New England region.

These defendants admit that certain of the subsidiary carriers which comprise the New York Central Railroad System separately file operating reports and other reports with the Interstate Commerce Commission, as alleged in the concluding paragraph of Paragraph 13; but these defendants aver that such subsidiary lines operate their own lines of railroad.

8. These defendants admit the allegations of the first and second sub-paragraphs of Paragraph 14, except that they deny that the yardmen on the New York Central Railroad Company—Lines West and the Michigan Central constitute a separate class or craft of employees apart from other yardmen on the New York Central Railroad Company, and except that under the certification issued by the defendant National Mediation Board the Switchmen's Union is not the legally constituted bargaining representative of said yardmen. These defendants admit the first sentence of the third sub-paragraph of Paragraph 14, but deny that the negotiation of a contract by the Brotherhood of Railroad Trainmen

as the duly certified representative of said yardmen will destroy or in any manner impair any of such rights.

9. These defendants admit that the defendant Brotherhood of Railroad Trainmen negotiated and maintained separate collective bargaining agreements with the New York Central Railroad Company covering yardmen employed by [fol. 60] said railroad on the lines described as the New York Central Railroad—Lines East, Ohio Central, The Big Four, Boston & Albany. These defendants deny the remaining allegations of Paragraph 15.

10. These defendants admit the allegations of Paragraph 16 that certain carriers comprising the New York Central Railroad System have negotiated and maintained separate contracts concerning rates of pay, hours and working conditions affecting employees on their lines; but these defendants aver that the New York Central Railroad System is not an operating carrier or a legal entity. With respect to the lessor, subsidiary and consolidated companies comprising the New York Central Railroad Company, these defendants deny the allegations of Paragraph 16 but aver that separate contracts concerning rates of pay, hours and working conditions were negotiated for such companies before they were leased and operated by the New York Central Railroad Company; that many of such contracts are still in effect and that in a few instances separate contracts have been negotiated since such lines have been leased and operated by the New York Central Railroad Company.

11. These defendants deny the first two sentences of Paragraph 21. For answer to the remaining allegations of said paragraph these defendants admit that the election ordered by the Board to be held was not conducted among the yardmen employed on all the lines comprising the so-called New York Central Railroad System but was conducted, as specified in the Board's order, among the yardmen employed on the entire New York Central Railroad Company. These defendants aver that the New York Central Railroad Company owns or holds all or a majority of the stock of the Pittsburgh & Lake Erie Railroad Company, The Louisville & Jeffersonville Bridge & Railroad Company, The Indiana Harbor Belt Railroad Company, The Chicago River & Indiana Railroad Company, and the Cleveland Union Terminals Company; that said companies do not

[fol. 61] comprise a part of the New York Central Railroad Company; and that each of said companies operates its respective lines of railroad, bridges, and terminals.

12. These defendants have no knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the amended complaint.

13. These defendants deny the first sentence of Paragraph 23 of the complaint.

(a) For answer to sub-paragraph (a) of Paragraph 33, these defendants admit that separate contracts concerning rates of pay, hours and working conditions were negotiated for the railroads mentioned before such roads were leased and operated by the New York Central Railroad Company; that many of such contracts are still in effect; and that in a few instances separate contracts have been negotiated since such lines have been leased and operated by the New York Central Railroad Company.

(b) These defendants deny that the record before the National Mediation Board discloses the facts alleged in sub-paragraph (b) of Paragraph 23. These defendants admit that the New York Central Railroad Company does not file with the Interstate Commerce Commission reports covering the operations of all lines comprising the so-called New York Central Railroad System; but aver that the New York Central Railroad Company does file an operating report covering the operations of all the leased, subsidiary and consolidated carriers which constitute the New York Central Railroad Company.

(c) These defendants deny that the record before the National Mediation Board discloses the facts alleged in sub-paragraph (c) but admit that the New York Central Railroad Company files an operating report which includes the operations of owned and leased lines and that some of the lessor companies file separate financial or accident reports but not separate operating reports. These defendants further aver that the Boston & Albany Railroad Company, one of the leased lines operated by the New York [fol. 62] Central Railroad Company, files numerous separate reports with the Interstate Commerce Commission but avers that these reports are required by the Commission

because of the importance of the Boston & Albany in connection with statistics relating to the New England region.

(d) These defendants deny the allegations in the first sentence of sub-paragraph (d) except that they admit such allegations in so far as the Pittsburgh & Lake Erie is concerned. For answer to the remaining allegations of this sub-paragraph, these defendants admit that the defendant Brotherhood of Railroad Trainmen negotiated and maintained separate agreements with the New York Central Railroad Company on behalf of certain yardmen employed on the lines of railroad described as the New York Central Railroad Company—Lines East, the Ohio Central, The Big Four, and the Boston & Albany. These defendants deny the remaining allegations of this sub-paragraph.

(e) These defendants admit the allegations contained in sub-paragraph (e) but aver that the New York Central Railroad Company does not own any of the capital stock of the Boston & Albany and that except for the Pittsburgh & Lake Erie none of the railroad companies mentioned in this sub-paragraph operates any line of railroad.

(f) These defendants admit that the executives of the New York Central Railroad Company are supervisory officers of the New York Central Railroad System and deny the remaining allegations contained in sub-paragraph (f) of Paragraph 23.

(g) These defendants admit that the evidence before the National Mediation Board discloses testimony by an officer of the New York Central Railroad Company indicating that he desired the continuance of existing bargaining units or divisions; but these defendants have no knowledge or information as to the desires of the New York Central Railroad Company in that respect, and accordingly deny the allegations contained in sub-paragraph (g) of Paragraph 23.

[fol. 63] (h) These defendants deny the allegations contained in sub-paragraph (h) of Paragraph 23.

(i) These defendants deny the allegations contained in sub paragraph (i) of Paragraph 23.

(j) These defendants admit that the New York Central Railroad Company—Lines East comprises the lines form-

erly owned by the New York Central and Hudson River Railroad Company, and that the New York Central Railroad Company—Lines West comprises the lines formerly owned by the Lake Shore & Michigan Southern Railroad Company at the time of their consolidation in December 1941 as the New York Central Railroad Company, but deny the remaining allegations of sub-paragraph (j) of Paragraph 23.

(k) These defendants deny the allegations contained in sub-paragraph (k) of Paragraph 23.

(l) These defendants deny the allegations contained in sub-paragraph (l) of Paragraph 23.

(m) These defendants have no knowledge or information sufficient to form a belief as to the truth of the allegations contained in sub-paragraph (m) of Paragraph 23.

(n) These defendants deny the allegations contained in sub-paragraph (n) of Paragraph 23 in so far as the subsidiary leased lines of the New York Central Railroad Company are concerned.

(o) These defendants deny the allegation contained in sub-paragraph (o) of Paragraph 23.

(p) These defendants admit the allegations contained in sub-paragraph (p) of Paragraph 23, but aver that the managers of the subsidiary lines are assistant vice presidents for other offices of the New York Central Railroad Company.

(q) These defendants admit the allegations contained in sub-paragraph (q) in so far as the Pittsburgh & Lake Erie is concerned, and aver that the New York Central Railroad Company is an operating carrier by railroad subject to the Interstate Commerce Act. With respect to the remaining [fol. 64] allegations of this sub-paragraph these defendants aver that the Boston & Albany, The Big Four, the Ohio Central, the Michigan Central, and the Peoria & Eastern are corporations owning but not operating lines of railroad, and that such corporations are subject to the Interstate Commerce Act.

Further Answering the Amended Complaint Herein, these defendants aver that:

14. The finding by the National Mediation Board that all yardmen employed by the New York Central Railroad Com-

pany, including those employed on lines formerly operated by other companies but now leased to the New York Central Railroad Company, are all eligible to participate in the election for the representative of the craft or class of yardmen of the New York Central Railroad Company is supported by substantial evidence and is not arbitrary, capricious or contrary to law, and the order of the National Mediation Board dated October 22, 1941 constitutes a valid exercise by the Board of its duties and functions under the Railway Labor Act and is, therefore, binding on the court.

Wherefore, having fully answered the amended complaint herein, these defendants pray that it be dismissed.

S. R. Brittingham, Jr., Special Assistant to the Attorney General. Irvin L. Stephenson, Special Attorney, Counsel for the defendants National Mediation Board, George A. Cook, Otto S. Beyer, and David J. Lewis.

* * * * * * *

[fol 65] IN UNITED STATES DISTRICT COURT

AMENDED ANSWER OF THE DEFENDANT, BROTHERHOOD OF RAILROAD TRAINMEN—Filed May 9, 1942

Comes now the defendant, Brotherhood of Railroad Trainmen, and answering the Amended Complaint in the order alleged respectfully states that it:

1. Admits the allegations of paragraph one.

2. Admits the allegations of paragraph two.

3. Admits the allegations of paragraph three.

4. Admits the allegations of paragraph four.

5. Admits the allegations of paragraph five.

6. Admits the allegations of paragraph six except it avers that the defendant, George A. Cook, is no longer Chairman of the National Mediation Board, and that David J. Lewis, one of the defendants, is now serving in that capacity.

7. Admits the allegations of paragraph seven.

8. Admits the allegations of paragraph eight.

9. Admits the allegations of paragraph nine except that it denies the majority of its members are engaged in road service, but avers that at the last analysis its membership was about evenly divided between members engaged in road and yard service.

10. Admits the allegations of pargaraph ten.

11. Admits the allegations of paragraph eleven.

12. Denies the allegations of paragraph twelve.

13. Admits the allegations contained in the first sub-paragraph of paragraph thirteen except the last sentence thereof, which it denies, and avers that the New York Central Railroad Company furnishes the Interstate Commerce Commission with numerous reports, including monthly accident reports, which reports are in many instances divided according to various operating territories in accordance with statistical practices approved by the Interstate Commerce Commission.

(a) Admits the allegations of sub-paragraph (a).

(b) Admits the allegations of sub-paragraph (b).

(c) Admits the allegations of sub-paragraph (c).

(d) Admits the allegations of sub-paragraph (d).

[fol. 66] For answer to the remaining allegations of paragraph thirteen, this defendant admits that the lessor or subsidiary companies operated by the New York Central Railroad Company furnished to the Interstate Commerce Commission separate annual financial reports and separate monthly accident reports, but avers that the annual financial reports so filed by said lessor or subsidiary companies contained no operating data, and avers further that the monthly accident reports are accepted by the Interstate Commerce Commission on a separate rather than consolidated basis in order to provide accident data for the various portions of the New York Central Railroad Company for use in connection with the promotion of safety. This defendant avers that this is a customary practice with the Interstate Commerce Commission and that a similar

method of reporting accident statistics is followed by other large railways such as the Pennsylvania Railroad Company, Southern Railroad Company and the Union Pacific Railroad. This defendant further avers that the New York Central Railroad Company files an annual report with the Interstate Commerce Commission which covers the operations of its own property and the properties of its various leased lines, and that said leased lines filed no such operating report with the Interstate Commerce Commission; and this defendant further avers that the annual financial and monthly accident reports filed with the Interstate Commerce Commission on behalf of the said leased companies are prepared and signed by officers of the New York Central Railroad Company and that all other reports filed with the Commission covering operations on certain roads are filed by the New York Central Railroad Company. This defendant admits that certain of the subsidiary carriers which comprise the New York Central Railroad System separately filed operating reports and other reports with the Interstate Commerce Commission, as alleged in the concluding paragraph of paragraph thirteen; but this defendant avers that such subsidiary lines, unlike the lessor companies which form a part of the New York Central Railroad Company, operate their own lines of railroad.

[fol. 67] 14. Admits the first and second paragraphs of paragraph fourteen, except it denies certain agreements are still in effect with the companies with which they were originally made and avers since the consolidation of the Lake Shore in 1914 and the lease of the Michigan Central in 1930, the respective agreements have been in effect with the New York Central, and denies that the yardmen of the Lake Shore and Michigan Southern Railway and the yardmen of the Michigan Central Railway constitute a separate craft or class of employees apart from other yardmen on the New York Central railroad company, and denies that the said railroads referred to are represented by the Switchmen's Union but state under certification of the defendant, National Mediation Board, this defendant, Brotherhood of Railroad Trainmen, is the legally constituted bargaining representative for said yardmen.

This defendant admits the first sentence of third subparagraph, but denies that any seniority rights will be destroyed if the findings, order and certification by the de-

fendant, Mediation Board, are not vacated and set aside, and denies that any seniority rights will be destroyed if the trainmen are permitted to negotiate a contract as a duly certified representative of said yardmen.

15. This defendant admits that it negotiated and maintained separate collective bargaining agreements with the New York Central Railroad Company covering yardmen employed by said railroad on the lines described as the New York Central Railroad—Lines East, Ohio Central, The Big Four, Boston & Albany. This defendant denies the remaining allegations of paragraph fifteen.

16. This defendant admits the allegations of paragraph sixteen that certain carriers comprising the New York Central Railroad system have negotiated and maintained separate contracts concerning rates of pay, hours and working conditions affecting employees on their lines; but this defendant avers that the New York Central Railroad system is not an operating carrier or a legal entity. With respect to the lessor, subsidiary and consolidated companies com-[fol. 68] prising the New York Central Railroad Company, this defendant denies the allegations of paragraph sixteen but avers that separate contracts concerning rates of pay, hours and working conditions were negotiated for such companies before they were leased and operated by the New York Central Railroad Company; that many of such contracts are still in effect and that in a few instances separate contracts have been negotiated since such lines have been leased and operated by the New York Central Railroad Company.

17. Admits the allegations contained in paragraph seventeen.

18. Denies the allegations contained in paragraph eighteen, but says that on July 2, 1940, the services of the Mediation Board were invoked by the Brotherhood of Railroad Trainmen for the purposes alleged in the first sentence of this paragraph, but although the term New York Central System was used, there appears a double asterisk after New York Central System with an explanation as to what this refers to at the bottom of the first paragraph of said invocation. That in Mediation Board Case No. F 690 "Findings Upon Investigation" dated May 27, 1941, in

the first paragraph of said certification appears the following:

"The Trainmen explained that by "New York Central System" it meant the New York Central—Lines East, the New York Central Lines—West; the Cleveland, Cincinnati, Chicago & St. Louis Railway; the Michigan Central Railroad; the Toledo and Ohio Central Railroad; and the Boston & Albany Railroad, as together constituting a single carrier, the New York Central Railroad Company, (hereinafter referred to as the "Railroad Company"), the craft or class of whose yardmen constitute a single undivided unit entitled, under the Railway Labor Act, to designate a representative for the purposes of the Act."

That in the first paragraph of the certification by the Board dated October 22, 1941, appears the following:

"Later in open hearing the Brotherhood of Railroad Trainmen explained that by the term "New York Central [fol. 69] Railroad System" it meant the lines operated by the New York Central Railroad Company but not other portions of the System".

This defendant denies the second sentence of said paragraph eighteen and states the invocation was available to the plaintiff from the file of the Mediation Board from which a copy of said invocation could have been made.

19. Admits the allegations of paragraph nineteen.

20. Admits the allegations of paragraph twenty.

21. Denies the allegations of the first and second sentences of paragraph twenty-one; for answer to the remaining allegations of said paragraph this defendant admits that the election ordered by the Board was not conducted among the yardmen employed on all the lines comprising the so-called New York Central Railroad system, but was conducted as specified by the Board order among the yardmen employed by the entire New York Central Railroad Company.

22. Denies the allegations contained in paragraph twenty-two, but admits that subsequent to the certification issued by the Board, they sought to negotiate with the New York Central Railroad Company pursuant to said certification in

behalf of the employees of the New York Central Railroad referred to in said certification.

23. Denies the allegations of the first sentence of paragraph twenty-three.

(a) Answering sub-paragraph (a) admits separate contracts were negotiated before the railroads referred to were leased and operated by the New York Central Railroad Company; but that since the leasing of the Boston & Albany, The Big Four, the Ohio Central, the Michigan Central and the Peoria and Eastern, these contracts have been negotiated and maintained with New York Central Railroad Company.

(b) This defendant denies that the record before the National Mediation Board discloses the facts alleged in sub-paragraph (b) of paragraph twenty-three. This defendant admits that the New York Central Railroad Company does [fol. 70] not file with the Interstate Commerce Commission reports covering the operations of all lines comprising the so-called New York Central Railroad System; but avers that the New York Central Railroad Company does file an operating report covering the operations of all the leased, subsidiary and consolidated carriers which constitute the New York Central Railroad Company.

(c) This defendant denies that the record before the National Mediation Board discloses the facts alleged in sub-paragraph (c) but admits that the New York Central Railroad Company files an operating report which includes the operations of owned and leased lines and that some of the lessor companies filed separate financial or accident reports but not separate operating reports. This defendant further avers that the Boston & Albany Railroad Company, one of the leased lines operated by the New York Central Railroad Company, files numerous separate reports with the Interstate Commerce Commission but avers that these reports are required by the Commission because of the importance of the Boston & Albany in connection with statistics relating to the New England region.

(d) Denies the allegations of the first sentence of sub-paragraph (d); as to the remainder of said sub-paragraph (d) admits separate agreements were negotiated and maintained with the New York Central Railroad Company on behalf of said yardmen employed on the lines of the rail-

road described as New York Central Lines, East, the Ohio Central, The Big Four, the Boston & Albany; denies the remaining allegations of said sub-paragraph (d).

(e) Admits the allegations of sub-paragraph (e) except as to the Boston & Albany, and alleges that the New York Central operates the railroad of the Boston & Albany under a lease, but does not own any of the capital stock of that company.

(f) This defendant admits that the executives of the New York Central Railroad Company are supervisory officers of the New York Central Railroad system and deny the re- [fol. 71] maining allegations contained in sub-paragraph (f) of paragraph twenty-three.

(g) Denies the allegations of sub-paragraph (g).

(h) Denies the allegations of sub-paragraph (h).

(i) Denies the allegations of sub-paragraph (i).

(j) Denies the allegations of sub-paragraph (j) except admits that portions of the Lines East and Lines West were owned, respectively, by the New York Central and Hudson River Railroad Company and the Lake Shore and Michigan Southern Railway Company and at the time of their consolidation with other companies in December, 1914, to form the defendant the New York Central Railroad Company.

(k) Denies the allegations of sub-paragraph (k).

(l) Denies the allegations of sub-paragraph (l).

(m) Denies the allegations of sub-paragraph (m).

(n) Denies the allegations of sub-paragraph (n).

(o) Denies the allegations of sub-paragraph (o).

(p) This defendant admits the allegations contained in sub-paragraph (p) of paragraph twenty-three, but avers that the managers of the subsidiary lines are assistant vice presidents for other offices of the New York Central Railroad Company.

(q) This defendant admits the allegations contained in sub-paragraph (q) in so far as the Pittsburgh & Lake Erie

is concerned, and avers that the New York Central Railroad Company is an operating carrier by railroad subject to the Interstate Commerce Act. With respect to the remaining allegations of this sub-paragraph, this defendant avers that the Boston & Albany, The Big Four, the Ohio Central, the Michigan Central, and the Peoria & Eastern are corporations owning but not operating lines of railroad, and that such corporations are subject to the Interstate Commerce Act.

24. Denies the allegations contained in paragraph twenty-four.

25. Denies the allegations contained in paragraph twenty-five.

[fol. 72] 26. Denies the allegations contained in paragraph twenty-six.

27. Denies the allegations contained in paragraph twenty-seven, except the first sentence of the last paragraph, which they admit.

28. Denies the allegations contained in paragraph twenty-eight.

29. Denies the allegations contained in paragraph twenty-nine.

30. Denies the existence of any wrong entitling the plaintiff to any relief either at law or in equity.

Further Answering The Amended Complaint this defendant avers:

31. The finding by the National Mediation Board that all yardmen employed by the New York Central Railroad Company, including those employed on lines formerly operated by other companies but now leased to the New York Central Railroad Company, are all eligible to participate in the election for the representative of the craft or class of yardmen of the New York Central Railroad Company is supported by substantial evidence and is not arbitrary, capricious or contrary to law, and the order of the National Mediation Board dated October 22, 1941, constitutes a valid exercise by the Board of its duties and functions under the Railway Labor Act and is, therefore, binding on the Court.

Wherefore, having fully answered the amended complaint herein, this defendant prays that it be dismissed.

Bernard M. Savage, 521 Title Building, Baltimore, Maryland, Attorney for Brotherhood of Railroad Trainmen; Alfred L. Bennett, Denrike Building, Washington, D. C., Attorney for Brotherhood of Railroad Trainmen.

[fol. 73] [File endorsement omitted.]

Copy of Answer to Amended Complaint mailed to:

Leo F. Tierney, 608 Mercantile Trust Building, Baltimore, Maryland, *Attorney for Switchmen's Union of North America, et al.*

S. R. Brittingham, Jr., Special Assistant to the Attorney General, Department of Justice, Washington, D. C., *Attorney for the Defendants, National Mediation Board, George A. Cook, Otto S. Beyer, and David J. Lewis.*

A. Rea Williams, 1040 Investment Building, Washington, D. C. *Attorney for The New York Central Railroad Company and The Michigan Central Railroad Company, Defendants.*

Henry B. Weaver, Jr., Tower Building, Washington, D. C. *Attorney for Switchmen's Union of North America, et al.*

I hereby certify that copies of Answer were deposited by me in the mail addres-ed to the above parties on May 8th, 1942.

Bernard M. Savage, 521 Title Building, Baltimore, Maryland.

[fol. 74] In United States District Court

Answer of the Defendants, the New York Central Railroad Company and the Michigan Central Railroad Company—Filed May 4, 1942

Come now the defendants, The New York Central Railroad Company and The Michigan Central Railroad Company, and for answer to the amended complaint herein respectfully allege:

1. These defendants admit the allegations contained in the first paragraph of paragraph 1 of the amended complaint, and deny knowledge or information sufficient to form

a belief as to the allegations contained in the second paragraph of paragraph 1 of the amended complaint, except that they admit that on and prior to July 1, 1940, the plaintiff Switchmen's Union represented certain yardmen and negotiated and entered into agreements on their behalf concerning rates of pay, hours of service, rules and working conditions at certain yards located on the New York Central Railroad west of Buffalo and on the Michigan Central Railroad west of Detroit.

2. These defendants admit the allegations contained in paragraph 2 of the amended complaint.

3. These defendants admit the allegations contained in paragraph 3 of the amended complaint.

4. These defendants admit the allegations contained in paragraph 4 of the amended complaint having reference to the Michigan Central Railroad, but they deny said allegations having reference to the Michigan Central Railroad Company.

5. These defendants admit the allegations contained in paragraph 5 of the amended complaint.

6. These defendants admit the allegations contained in paragraph 6 of the amended complaint.

7. These defendants admit the allegations contained in paragraph 7 of the amended complaint.

8. These defendants admit the allegations contained in paragraph 8 of the amended complaint.

[fol. 75] 9. These defendants admit the allegations contained in paragraph 9 of the amended complaint, except that they deny knowledge or information sufficient to form a belief as to whether or not a majority of the members of the Brotherhood of Railroad Trainmen are engaged in road service.

10. These defendants deny the allegations contained in paragraph 10 of the amended complaint, except that they admit and allege that the defendant The New York Central Railroad Company (herein referred to as the New York Central) is a railroad corporation formed pursuant to the laws of the States of New York, Pennsylvania, Ohio, In-

diana, Illinois and Michigan, having its principal office in the City of Albany, in the State of New York, and is a common carrier by railroad.

11. These defendants deny the allegations contained in paragraph 11 of the amended complaint, except that they admit and allege that the defendant The Michigan Central Railroad Company (herein referred to as the Michigan Central) is a railroad corporation formed pursuant to the laws of the State of Michigan, having its principal office in the City of Detroit, in the State of Michigan.

12. These defendants admit that this suit is of a civil nature and is brought by the plaintiffs for certain purposes alleged in paragraph 12 of the amended complaint, but they deny knowledge or information sufficient to form a belief as to the validity and legal effect of the findings and conclusions and the certification of the Board as alleged in said paragraph.

13. These defendants deny the allegations contained in paragraph 13 of the amended complaint, except that they admit and allege that prior to December, 1914, The Lake Shore and Michigan Southern Railway Company was a common carrier by railroad operating lines extending generally from Buffalo to Chicago, and prior to December, 1914, The New York Central and Hudson River Railroad Company was a common carrier by railroad operating lines [fol. 76] extending generally from New York to Buffalo and in December, 1914, said companies among others were consolidated to form The New York Central Railroad Company whose lines extend generally from New York to Chicago; that certain portions of said lines west of Buffalo are sometimes known as the New York Central Railroad—Lines West, and certain portions of said lines east of Buffalo are sometimes known as the New York Central Railroad—Lines East; that the New York Central furnishes the Interstate Commerce Commission with monthly reports of accidents upon lines of railroad operated by said company, such reports being divided according to various territories in accordance with the practice accepted by the Bureau of Statistics of the Interstate Commerce Commission; that the New York Central owns a majority of the stock of The Cleveland, Cincinnati, Chicago and St. Louis Railway Company (herein referred to as the Big Four), an Ohio and

Indiana corporation, and effective Februray 1, 1930, the New York Central leased the railroad of said company for a term of ninety-nine years and now operates said railroad extending generally from Cleveland to Cincinnati, Chicago, and St. Louis; that the New York Central owns a majority of the stock of The Michigan Central Railroad Company (herein referred to as the Michigan Central), a Michigan corporation, and effective February 1, 1930, the New York Central leased the railroad of said company (including its leased line, the Canada Southern Railway) for a term of ninety-nine years and now operates said railroad extending generally from Buffalo, through Detroit to Chicago; that the New York Central does not own any stock of the Boston and Albany Railroad Company (herein referred to as the Boston & Albany), a Massachusetts and New York corporation, and effective July 1, 1900, the New York Central leased the railroad of said company for a term of ninety-nine years and now operates said railroad extending generally from Boston to Albany; that the New York Central owns all of the stock of The Toledo and Ohio [fol. 77] Central Railway Company (herein referred to as the Ohio Central), an Ohio corporation, and effective January 1, 1922, the New York Central leased the railroad of said company for a term to continue during the corporate existence of the lessor and now operates said railroad extending generally from Toledo to Columbus; that the Big Four, the Michigan Central, the Boston & Albany, and the Ohio Central file annual financial reports as lessor companies with the Interstate Commerce Commission, and the New York Central files monthly reports of accidents on said leased railroads (the accident reports on the Ohio Central being included with the New York Central Railroad—Lines West), and the New York Central includes the operation of said leased railroads in its annual operating reports; that The Peoria and Eastern Railway Company (herein referred to as the Peoria & Eastern), an Illinois corporation, is a subsidiary of the New York Central, and the railroad of the Peoria & Eastern (in connection with the Big Four) is leased to and operated by the New York Central; that the Peoria & Eastern files annual financial reports as a lessor company with the Interstate Commerce Commission, and the New York Central files monthly reports of accidents on said leased railroad, and the New

York Central includes the operations of said railroad in its annual operating reports; that certain subsidiary companies of the New York Central such as The Pittsburgh and Lake Erie Railroad Company (herein referred to as the Pittsburgh & Lake Erie), a Pennsylvania and Ohio corporation, operate their own lines of railroad and file separate annual financial and operating reports and monthly accident reports with the Interstate Commerce Commission.

14. These defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 14 of the amended complaint, except that they admit that prior to December, 1914, in respect of the Lines West of Buffalo then operated by The Lake Shore and [fol. 78] Michigan Southern Railroad Company (a corporate predecessor of the New York Central), and prior to the year 1930 in respect of the Michigan Central Railroad then operated by The Michigan Central Railroad Company (whose railroad is now leased to the New York Central), the plaintiff Switchmen's Union negotiated and maintained certain agreements concerning rates of pay, hours, rules and working conditions of certain yardmen employed on said lines of railroad, and that such agreements with modifications and additions have continued in effect, except that since the consolidation of the Lake Shore in 1914, and the lease of the Michigan Central in 1930, the respective agreements have been in effect with the New York Central.

15. These defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 15 of the amended complaint, except that they admit that the defendant Brotherhood of Railroad Trainmen negotiated and maintained separate agreements with the New York Central on behalf of certain yardmen employed on the lines of railroad described as the New York Central Railroad—Lines East, the Ohio Central, the Big Four, and the Boston & Albany.

16. These defendants admit the allegations contained in paragraph 16 of the amended complaint, except that they deny that the lessor, subsidiary and consolidated companies have negotiated and maintained, and continue to negotiate and maintain, separate contracts concerning rates of pay, hours and working conditions affecting employees on the lines of railroad comprising the New York Central System.

except subsidiary companies which operate their own lines of railroad such as The Pittsburgh and Lake Erie Railroad Company, and in those instances the subsidiary companies negotiate and maintain separate agreements.

17. These defendants admit the allegations contained in paragraph 17 of the amended complaint.

18. These defendants admit the allegations contained in paragraph 18 of the amended complaint, except that they deny that there are any persons in the employ of the New [fol. 79] York Central System as distinguished from the operating companies.

19. These defendants admit the allegations contained in paragraph 19 of the amended complaint.

20. These defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 20 of the amended complaint, except that they admit that mediators were assigned by the National Mediation Board to investigate the alleged dispute, that the mediators held an election, and that on or about October 22, 1941, the Board issued its certification, a copy of which is attached to the amended complaint.

21. These defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 21 of the amended complaint, and they further allege that the New York Central owns or holds all or a majority of the stock of The Pittsburgh and Lake Erie Railroad Company, the Louisville & Jeffersonville Bridge and Railroad Company, the Indiana Harbor Belt Railroad Company, The Chicago River and Indiana Railroad Company, and The Cleveland Union Terminals Company, and that said companies operate their respective lines of railroad, bridges and terminals.

22. These defendants deny the allegations contained in paragraph 22 of the amended answer, except that they admit that subsequent to said election and the certification issued by the Board the defendant Brotherhood of Railroad Trainmen sought to negotiate with the New York Central pursuant to said certification and in behalf of the employees of the New York Central referred to in said certification.

23. These defendants deny knowledge or information sufficient to form a belief as to the allegations contained in the

first sentence of paragraph 23 of the amended complaint; and for answer to the sub-paragraphs thereof in respect to the matters therein alleged, these defendants:

(a) Admit the allegations of sub-paragraph (a), except that in respect of the Boston & Albany, the Big Four, the Ohio Central, the Michigan Central, and the Peoria & East- [fol. 80] ern, the contracts have been negotiated and maintained with the New York Central subsequent to its leasing of said railroads.

(b) Deny the allegations of sub-paragraph (b), except admit that the New York Central does not file reports for lessor and subsidiary companies.

(c) Deny the allegations of sub-paragraph (c), except admit and allege that the New York Central files an operating report which includes the operations of owned and leased lines, that the subsidiary operating companies file separate reports covering their operations, and that the lessor companies file separate financial reports, except that in respect of certain lessor companies, including the Big Four, Michigan Central, Ohio Central, and Peoria & Eastern, the annual financial reports are contained in one Annual Report of Lessors of The New York Central Railroad Company, showing separate information as to each company.

(d) Deny knowledge or information sufficient to form a belief as to the allegations of sub-paragraph (d), except admit that the defendant Brotherhood of Railroad Trainmen negotiated and maintained separate agreements with the New York Central on behalf of certain yardmen employed on the lines of railroad described as the New York Central Railroad—*Lest* East, the Ohio Central, the Big Four, and the Boston & Albany.

(e) Admit the allegations of sub-paragraph (e), except as to the Boston & Albany, and allege that the New York Central operates the railroad of the Boston & Albany under a lease, but does not own any of the capital stock of that company.

(f) Deny the allegations of sub-paragraph (f), except admit and allege that various executives or officials of the New York Central and affiliated operating companies customarily negotiate labor contracts within the territory of their respective jurisdiction.

(g) Deny the allegations of sub-paragraph (g), except admit and allege that the New York Central desires to main-[fol. 81] tain satisfactory labor relations with its employees according to bargaining units or divisions that will be appropriate to such purpose and will serve the best interest of those concerned.

(h) Deny knowledge or information sufficient to form a belief as to the allegations of sub-paragraph (h).

(i) Deny the allegations of sub-paragraph (i), except admit and allege that the New York Central is a railroad corporation formed under an agreement of consolidation entered into by several railroad companies.

(j) Deny the allegations of sub-paragraph (j), except admit that portions of the Lines East and Lines West were owned, respectively, by The New York Central and Hudson River Railroad Company and The Lake Shore and Michigan Southern Railway Company at the time of their consolidation with other companies in December, 1914, to form the defendant The New York Central Railroad Company.

(k) Deny knowledge or information sufficient to form a belief as to the allegations of sub-paragraph (k).

(l) Deny knowledge or information sufficient to form a belief as to the allegations of sub-paragraph (l).

(m) Deny knowledge or information sufficient to form a belief as to the allegations of sub-paragraph (m).

(n) Deny the allegations of sub-paragraph (n), except admit and allege that the New York Central and its subsidiary operating companies keep separate payroll records of their respective employees.

(o) Deny the allegations of sub-paragraph (o), except admit and allege that the New York Central and its subsidiary operating companies have separate offices at various places where grievances may be taken up by labor organizations representing employees.

(p) Deny the allegations of sub-paragraph (p), except admit that negotiations for wage agreements have been and are customarily conducted by various officers of the carriers within their respective territories.

[fol. 82] (q) Deny the allegations of sub-paragraph (q), except admit that the New York Central and the Pittsburgh & Lake Erie are carriers by railroad subject to the Interstate Commerce Act, and that the Boston & Albany, the Big Four, the Ohio Central, the Michigan Central, and the Peoria & Eastern are lessor railroad companies subject to said Act.

24. These defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 24 of the amended complaint.

25. These defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 25 of the amended complaint, except that they admit that the descriptive title New York Central System does not have reference to a legal entity.

26. These defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 26 of the amended complaint.

27. These defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 27 of the amended complaint, except that they deny that the companies described as the Boston & Albany, the Big Four, the Ohio Central, and the Michigan Central are carriers within the meaning of the Railway Labor Act.

28. These defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 28 of the amended complaint, except that they admit that it has long been the practice for the yard employee members of the plaintiff Switchmen's Union to have a representative of their own choice for collective bargaining purposes under the Railway Labor Act.

29. These defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 29 of the amended complaint, except that they deny that The Michigan Central Railroad Company has any yardmen in its employ.

30. These defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 30 of the amended complaint.

[fol. 83] Further answering the amended complaint herein, these defendants allege:

The defendant Michigan Central is a lessor railroad company, having leased its railroad to the New York Central for a long term of years, and the Michigan Central does not operate a railroad and has no employees engaged in railroad operation.

The defendant New York Central is a railroad company engaged in the operation of owned and leased lines of railroad, including among others the portion of its owned railroad known as the Lines West between Buffalo, Cleveland and Chicago, and the leased railroad known as the Michigan Central between Buffalo, Detroit and Chicago, and is a common carrier of passengers and property in interstate and foreign commerce over said lines of railroad.

These defendants maintain a strictly neutral position in respect to the controversy here in litigation, and express no preference whatever in favor of one or the other of the labor organizations which are parties to this suit.

The defendant New York Central, being the operating company concerned with labor relations, desires to maintain satisfactory relations with and among its employees on a sound basis having reference to the circumstances and conditions under which railroad transportation is conducted in the interest of the company and its employees and the general public.

Wherefore, these defendants pray that the issues herein be determined according to law as may be just and proper in the premises.

A. Rea Williams, Attorney for The New York Central Railroad Company and The Michigan Central Railroad Company, Defendants, 1040 Investment Building, Washington, D. C.

[fol. 84] In United States District Court

Stipulation as to Certain Facts—Filed May 11, 1942

Come now the parties to this action and stipulate the following facts:

1. The New York Central Railroad Company files with the Interstate Commerce Commission an annual report

which covers the operations of its own property and of the properties of its various leased lines, including the Boston & Albany Railroad, the Michigan Central Railroad, the Cleveland, Cincinnati, Chicago, and St. Louis Railroad, the Peoria & Eastern Railroad, the Toledo & Ohio Central Railway Company, and others. This annual operating report is not broken down for the purpose of disclosing the results of the operations on the various leased lines. A sample of the annual report form filed with the Commission by the New York Central Railroad Company (Form A) is attached hereto.

2. The leased lines named in Paragraph 1 are carriers within the meaning of the Interstate Commerce Act for the purpose of filing reports, but do not operate any of the properties owned by them. The leased lines file annual reports with the Commission on a form prescribed by the Commission, but these reports contain only financial and corporate data and do not include any operating data. A sample of the annual report form prescribed by the Commission for use by lessor companies (Form E) is attached hereto.

3. The New York Central Railroad Company also files the following periodic reports:

Monthly

Operating Revenues and Operating Expenses.
Selected Income and Balance Sheet Items.
*Employees, Service and Compensation.
*Freight Train Performance.
*Passenger Train Performance.
*Fuel and Power for Locomotives and Rail Motor Cars.
[fol. 85] * Yard Service Performance.
* Revenue Traffic Statistics.
* Motive Power and Car Equipment.
* Analysis of Passenger Traffic.
Railway Accidents.

Quarterly

* Highway Traffic.
* Freight Commodity Statistics.
Tons of Revenue Freight Originated and Tons Terminated by Commodities and by Geographic Areas.

Sample copies of the foregoing reports prescribed by the Interstate Commerce Commission are attached hereto and bear the captions indicated above.

4. In the above mentioned monthly and quarterly reports the New York Central Railroad Company includes the results of operations over all of its leased lines except that the Boston & Albany (New York Central R. R. Co., Lessee) separately files those reports marked with an asterisk. Such separate reports are required of the Boston & Albany Railroad because of its importance in connection with statistics relating to the New England region. The Boston & Albany Railroad does not file an annual operating report, described in Paragraph 1, nor a monthly report of Operating Revenues and Operating Expenses.

5. Separate monthly reports of accidents are received from the Boston & Albany, Cleveland, Cincinnati, Chicago & St. Louis, Michigan Central, and the Peoria & Eastern, which reports are signed by O. G. Brown, General Claims attorney of the New York Central R. R. Company; and the New York Central Railroad Company files separate monthly accident reports for the New York Central—Lines East and the New York Central—Lines West. Certified copies of these reports are attached hereto. These monthly accident reports are filed with and accepted by the Interstate Commerce Commission on an individual rather than on a consolidated basis in order to provide accident data for use, among other things, in connection with the promotion of safety. A similar method of reporting accident statistics [fol. 86] is followed by other large carriers such as the Pennsylvania Railroad, the Southern Railway, and the Union Pacific.

Dated this 11th day of May 1942.

Henry B. Weaver, Jr., Tower Building, Washington, D. C.; Leo F. Tierney, 608 Mercantile Trust Building, Baltimore, Maryland, Attorneys for Plaintiffs.

S. R. Brittingham, Jr., Special Assistant to the Attorney General, Attorney for National Mediation Board and Members Thereof; Alfred L. Bennett, Bernard M. Savage, Attorneys for Brotherhood of Railroad Trainmen; A. Rea Williams, Attorney for New York Central Railroad Company and Michigan Central Railroad Company, Attorneys for Defendants.

In United States District Court

Findings of Fact and Conclusions of Law—Filed July 10, 1942

This cause having been heard and determined upon the pleadings, the record before the defendant National Mediation Board introduced in evidence herein by the plaintiffs, the stipulation between the parties, and the oral arguments of counsel, the Court now makes and enters the following findings of fact and conclusions of law:

[fol. 87] Findings of Fact

1. The plaintiff Switchmen's Union of North America and the defendant Brotherhood of Railroad Trainmen are labor unions which represent yardmen employed by rail carriers. The term yardmen embraces yard foremen or conductors, helpers or brakemen, and switchtenders and car retarder operators. On July 2, 1940 the defendant Brotherhood of Railroad Trainmen (hereinafter referred to as the Brotherhood) invoked the services of the defendant National Mediation Board to investigate a representation dispute claimed to exist among the yardmen employed on the New York Central Railroad Company (hereinafter sometimes referred to as the Railroad Company or the carrier). In accordance with its customary procedure the defendant Board assigned one of its mediators to make a preliminary investigation; and on the basis thereof the Board concluded that a dispute existed, and it set the matter for hearing in order to determine the basis upon which to conduct an election among the employees involved.

2. Prior to December 1914, the Lake Shore and Michigan Southern Railway Company was a common carrier by railroad, operating lines extending generally from Buffalo, New York to Chicago, Illinois, and prior to December 1914, the New York Central and Hudson River Railroad Company was a common carrier by railroad operating lines extending generally from New York, New York to Buffalo, New York. In December 1914, the Lake Shore and Michigan Southern Railway Company and the New York Central and Hudson River Railroad were consolidated to form the New York Central Railroad Company, extending from New York to Chicago, Illinois. That portion of the New York Central Railroad Company which formerly comprised the

Lake Shore and Michigan Southern Railway Company is now commonly known as the New York Central—Lines West of Buffalo, and that portion of the New York Central Railroad Company which formerly comprised the New York [fol. 88] Central and Hudson River Railroad Company is now commonly known as the New York Central—Lines East. The New York Central Railroad Company also operates the lines of several separate lessor or subsidiary corporations under long term leases or controlling stock ownership. The railroad companies whose lines are thus operated are the Boston and Albany, the Cleveland, Cincinnati, Chicago, and St. Louis Railway Company (The Big Four), the Michigan Central, and the Toledo and Ohio Central. The Railroad Company owns no stock of the Boston & Albany but has controlling stock ownership in the other lines named. Each of these lessor companies has long term leases on a number of smaller railroads which are now operated under the lease between the intermediate lessor company and the New York Central. As stated above, the New York Central Railroad Company is divided into operating regions designated as Lines East of Buffalo and Lines West of Buffalo, but these segments have no corporate existence.

The leases between the Railroad Company (lessee) and the various subsidiaries are for 99 years renewable in perpetuity except for the lease on the Toledo and Ohio Central, which is to continue for the corporate existence of the lessor. All have been in effect for 20 years or more. None of the leased subsidiaries operates any line of railroad or any railroad equipment and the only operations conducted over said leased subsidiaries are those of the New York Central.

3. In the operation of the Railroad Company common executives serve both the New York Central and the subsidiary companies and coordinate activities where the use of more than one part or line of the company is involved. The Executive Vice President coordinates the activities of the mechanical and maintenance of way departments and train service coordination is secured through managers of passenger and freight transportation who plan and supervise the through passenger and freight service affecting all [fol. 89] the lines. Management of the carrier's affairs does not follow either the corporate or the geographical lines of the subsidiaries. The superintendent at Toledo has jurisdiction over the entire Toledo terminal in which

is included portions of the Michigan Central, the New York Central—Lines West and the Toledo and Ohio Central; the timekeeping department located at Detroit handles payrolls for New York Central—Lines West, the Michigan Central, the Big Four, and the Toledo and Ohio Central; and payrolls for the New York Central—Lines East and the Boston and Albany are prepared in Utica.

4. Existing agreements between the management and representatives of other crafts or classes of employees vary in their territorial scope, as set forth in the Board's Finding No. 6, but in most instances these agreements, many of which were executed before the unification, cover the employees of the given craft or class on the leased lines and on the New York Central—Lines East and Lines West separately. Negotiations between management and representatives of employees are subject to the general supervision of the Vice President-Personnel of the New York Central, whose principal function is to serve in an advisory capacity to the responsible officials of the different properties. In some cases however the Vice President-Personnel has participated in actual negotiations for changes in rules or working conditions applicable only to particular subsidiaries.

With respect to employee grievances bureaus have been established at various points on the Railroad Company. In some cases the handling of grievances has been concluded with the bureau or vice president located at the particular point. In other cases the grievances have been carried to and handled by Vice President-Personnel before submitting them to the National Railroad Adjustment Board.

5. The leased lines conduct no transportation service and except for the Boston & Albany they file no operating reports with the Interstate Commerce Commission: the New [fol. 90] York Central files the only operating reports, which are not broken down to show the results of operations on the individual lessor lines. The leased lines retain their corporate identities and file annual financial reports with the Interstate Commerce Commission. Also, separate monthly accident reports are filed for them and the New York Central segregates the monthly accident reports for its Lines East and Lines West.

6. There have been several instances of merging of seniority rosters of yardmen in the service of the subsidiary

lines or companies. Since 1935 engine numbers on Big Four locomotives have been changed to correspond with New York Central locomotive numbers and in similar fashion numbers on box cars and other equipment, even when they do not leave the lines of the Big Four, have been conformed. No per diem charge is exacted on locomotives and cars exchanged between the New York Central and the Big Four.

7. There are approximately 6,087 yardmen employed by the Railroad Company. At the time the Board's services were invoked the plaintiff Switchmen's Union represented the yardmen in all but nine yards on the New York Central—Lines West of Buffalo and in all yards on the Michigan Central west of the Detroit River, including the South Bend Transfer Crews. The defendant Brotherhood represented yardmen in yards on the Michigan Central east of the Detroit River, in nine yards on the New York Central—Lines West of Buffalo, and all yardmen on the New York Central—Lines East of Buffalo, the Toledo and Ohio Central, The Big Four, and the Boston and Albany; and at that time no one questioned the right of the Brotherhood to represent the yardmen employed on the four last mentioned lines.

8. The distribution of the aforesaid yardmen as of the middle of November 1940 was as follows:

[fol. 91]

	NYC Lines East	NYC Lines West	Toledo & Ohio Central	Michigan Central	Cleveland Cincinnati Chicago & St. Louis	Boston and Albany	Total
Yard conductors, including car retarder operators	568	337	63	282	216	65	1,531
Yard brakemen	1,413	854	471	725	616	134	3,913
Switchtenders	300	171	11	65	56	40	643
	2,281	1,362	245	1,072	888	239	6,087

9. The signed authorizations from the yardmen submitted to the Board by the Brotherhood on July 2, 1940 were as follows:

	NYC Lines East	NYC Lines West	Toledo & Ohio Central	Michigan Central	Cleveland Cincinnati Chicago & St. Louis	Boston and Albany	Total
Authorizations	2,129	774	374	479	779	214	4,749

10. The Brotherhood claimed to represent the craft or class of yardmen on the entire New York Central Railroad Company, including its leased lines, and the foregoing paragraph shows that the Brotherhood held authorizations from a majority or from a substantial portion of the yardmen on the New York Central and each of its leased lines. The plaintiff Switchmen's Union denied the right of the Brotherhood to represent the yardmen employed by the Railroad Company and claimed that it represented the yardmen on the New York Central—Lines West and the Michigan Central. These conflicting claims constituted a dispute within the meaning of the Railway Labor Act as to who represented the craft or class of yardmen on the Railroad Company.

11. On the basis of all the evidence and exhibits the defendant Board concluded that the operations conducted by the New York Central Railroad Company including those conducted over the leased lines constituted a single carrier operation within the meaning of the Railway Labor Act and that all the members of the craft or class of yardmen employed by the New York Central were eligible to and should vote for the representative of that craft or class. Accordingly an election was conducted among all the yard-[fol. 92] men on the lines of the New York Central, including its leased lines. At the time of the election there were 7187 employees eligible to vote and 5260 voted. The defendant Brotherhood received 4112 votes and the Switchmen's Union received 941.

Conclusions of Law

1. The finding and conclusion of the Board that there existed a representation dispute within the meaning of Section 2, Ninth, of the Railway Labor Act is supported both by substantial evidence and the weight of the evidence and is not arbitrary, capricious or unreasonable.

2. The finding and conclusion of the Board that the Railroad Company and its operated subsidiaries including the Boston and Albany, the Big Four, the Michigan Central and the Toledo and Ohio Central constitute a single carrier for the purpose of the Railway Labor Act is supported both by substantial evidence and the weight of the evidence and is not arbitrary, capricious or unreasonable.

3. The finding and conclusions of the Board that all the employees of a given craft or class, such as yardmen, in the service of a carrier may be taken together as constituting a proper basis for selecting a representative in accordance with Section 2, Ninth, of the Railway Labor Act is reasonable, proper and not an abuse of discretion and should not be set aside.

4. The complaint herein should be dismissed.

Daniel W. O'Donoghue, Justice.

July 10, 1942.

IN UNITED STATES DISTRICT COURT

JUDGMENT—Filed July 10, 1942

This cause having been heard upon the pleadings, the record before the defendant National Mediation Board, the stipulation of the parties and oral argument of counsel, and [fol. 93] the Court being now fully advised in the premises and having made and entered findings of fact and conclusions of law, it is by the Court this 10 day of July 1942.

Adjudged and Ordered that the prayers of the complaint be and they hereby are severally denied and the said complaint be and it hereby is dismissed at the plaintiffs' costs.

Daniel W. O'Donoghue, Justice.

IN UNITED STATES DISTRICT COURT

Excerpts from Reporter's Transcript of Proceedings of Investigation by National Mediation Board

* * * * * * *

[fol. 94] BEFORE THE NATIONAL MEDIATION BOARD

In re

REPRESENTATION of Yardmen (Foremen or Conductors, Helpers or Brakemen, Switchmen and Car Retarder Operators) Employed by The New York Central Lines, East and West, and Affiliated Lines

Case No. R-690

North Interior Building, Room 2022,
Washington, D. C.,
Thursday, February 20, 1941,
10 o'clock a. m.

Before Mr. George A. Cook, Chairman, Mr. Otto Beyer, and Mr. David J. Lewis

APPEARANCES:

On behalf of the Brotherhood of Railroad Trainmen: Mr. C. B. Bayly, Counsel; Mr. W. P. Kennedy, Vice President; Mr. W. G. Cantley, Statistician.

On behalf of the Switchmen's Union of North America: Mr. Frank L. Mulholland, Counsel; Mr. T. C. Cashen, President.

On behalf of the Brotherhood of Locomotive Firemen and Enginemen: Mr. Jonas McBride, President.

On behalf of the New York Central Railroad Company: Mr. John G. Walber, Vice President.

On behalf of the Grand Chief Engineer of the Brotherhood of Locomotive Engineers: Mr. John T. Corbett.

[fol. 95] On behalf of the Order of Railroad Conductors: Mr. W. D. Johnson.

Proceedings

The Chairman: Gentlemen, please come to order.

* * * * * * *

The Chairman: The hearing this morning is made necessary under the provisions of Section 2, Ninth, of the Railway Labor Act, which provides that the Board shall investi-

gate representation disputes among a carrier's employes.

The investigation by a Mediator was started in New York on January 20, 1940, and the Mediator was not successful in getting the representatives of the Brotherhood of Railroad Trainmen and Switchmen's Union of North America to agree upon an eligible list of voters, the reason being that they could not agree upon the term or definition of what constituted a carrier.

The Board, therefore, on the 10th day of February, 1941, issued notice of hearing, Docket Case R-690, and said in part:

"Whereas, the representatives of the Brotherhood of Railroad Trainmen and the Switchmen's Union of North America could not be brought into agreement as to whether all of the yardmen together, employed by the lines and railroads composing the New York Central System, as outlined by the Brotherhood of Railroad Trainmen and hereinbefore mentioned, constitute the basis upon which their representation should be determined under the provisions of the Railway Labor Act or whether this basis of representation should be by the yardmen as employed on individual lines or railroads and lines of the New York Central System, by some portion or portions thereof, or by some combination of these lines or railroads."

. . . . . .

[fol. 96] The Chairman: As I understand the contention or position of the Brotherhood of Railroad Trainmen, as set forth in their application to the Board, it is their position that the New York Central Railroad System is a carrier made up of the New York Central Lines East, New York Central Lines West, Big Four—I guess you call that the Cleveland, Cincinnati, Chicago & St. Louis Railway—Michigan Central, Ohio Central Lines, and Boston & Albany. Is that correct, Mr. Bayly?

Mr. Bayly: That is true, expanded as we have set forth here, that is right.

. . . . . .

WALTER G. CANTLEY was called as a witness on behalf of the Brotherhood of Railroad Trainmen, and testified as follows:

Direct examination.

By Mr. Bayley:

Q. Will you state your name and residence?
A. Walter G. Cantley; Lakewood, Ohio.

* * * * * * *

Q. In our request to this Board we have asked for an interpretation of what constitutes a carrier, and have asked the Board to use its interpretations heretofore enunciated.

Will you give us what they have been, for the purposes of the record.

A. In making this invocation for the services of the Board in this dispute, and which was handled directly by me, the detail of it, I was required to consider expressions of the Board as to what it contemplated to be a carrier.

I referred to the first annual report of the Board, in which there is found this expression——

Q. Give the date of that, will you?

A. The first annual report for the fiscal year ended June 30, 1935.

[fol. 97] The Chairman: Transmitted under date of November 1, 1935.

The Witness: Page 22:

"(c) What is a carrier?—Although the term 'carrier' is clearly defined in the Act, questions have arisen in connection with representation disputes which made it necessary for the Board to interpret its meaning. Where a railroad system is composed of a number of subsidiary corporations, employes have been in dispute as to whether one vote should be taken of a craft on the whole system or whether the subsidiary corporations are carriers within the meaning of the Act whose employes are entitled to separate representation. The Board has ruled generally that where a subsidiary corporation reports separately to the Interstate Commerce Commission, and keeps its own payroll and seniority rosters, it is a carrier as defined in the Act, and its employes are entitled to representation separate from other carriers who may be connected with the same railroad system. If the operations of a subsidiary are jointly merged with operations of other carriers and

the employes have also been merged and are subject to the direction of a single management, then the larger unit of management is taken to be the carrier rather than the individual subsidiary companies."

In that definition a major consideration seems to be whether or not a separate report is made to the Interstate Commerce Commission.

Q. What does the history show with reference to the New York Central Railroad Company?

A. Applying that test then to the New York Central Railroad Company, and referring to the reports of the Interstate Commerce Commission which are officially known as Statistics of Railways in the United States, for the year ended December 31——

Q. 1938?

A. That is the caption in all of them. This particular one is 1938. They are commonly referred to as the Blue Book.

[fol. 98] We find in those volumes a table captioned, "Table showing single-track mileage and intercorporate relation of steam railway companies on Dec. 31," and then the appropriate year, whatever it may be.

The New York Central Railroad Company is indicated in these tables as the primary company, and following that is given information with respect to the status of its various so-called subsidiaries.

I have not taken into consideration any of the short lines or pieces of track that really I did not consider pertinent to this inquiry, for the reason that the major question, as I understood it, was whether or not the so-called Michigan Central Railroad, the so-called Big Four, the so-called Ohio Central Lines, formerly the T. & O. C., and the so-called Boston & Albany were in themselves a carrier as defined by the Board in its first annual report.

Q. May I interrupt you? What do you find with reference to this report of the carrier as to whether or not it is a joint or unified report covering these so-called territorial subsidiaries? Is it a consolidated, joint, one report?

A. The report for the year 1938, which is the last report which has been published by the Commission (unless the 1939 report is out just recently) shows the New York Central Railroad Company as the only one of these territorial

units which makes a report to the Interstate Commerce Commission.

Q. In other words, you are saying, are you, that this was a unified report?

A. Yes, sir. That is what I understand it to be, yes, sir.

Color is lent to that theory by a foot-note on page 24 of the report for the year ended December 31, 1938, which reads, applicable to the New York Central Railroad Company:

"Figures for operations cover whole line, 11,070 miles; 501 miles in Canada."

Those figures of operation apply to railway operating income and expenses, taxes and operating results of va- [fol. 99] rious characters which could be more minutely defined, but I will not go into detail right now.

In order to develop whether our understanding of the situation was correct, I wrote Mr. M. O. Lorenz, Director of Statistics, Interstate Commerce Commission, Bureau of Statistics, in behalf of President Whitney, and made inquiry, and this is the answer dated March 5, 1940:

"In answer to your letter of February 29 I wish to advise that the Boston and Albany Railroad Company reports to this Commission as a lessor company of the New York Central Railroad. Its property was leased to the New York Central and Hudson River Railroad (now the New York Central Railroad) as of July 1, 1900 for 99 years. The annual reports of the New York Central to this Commission include the results of the operations from the lines of all of its lessor companies, including the Boston and Albany. In their reports operating carriers are not required to show separately the results of operations over leased lines. Lessor companies file separate annual financial reports with the Commission but these reports do not show operating results.

"The Commission receives separate monthly reports of operating statistics and wages and quarterly reports of freight commodity statistics from the Boston and Albany. The New York Central agreed to file these separate reports of operations in response to a request from this Bureau. The information is desired because of the relative statistical importance of the Boston and Albany in the New England Region."

I understand that that means that because of the practice of the Interstate Commerce Commission of publishing statistics for various regions of the country they made a special request of the New York Central that it furnish this data for the Boston and Albany, which is located in the New England region, in order that the figures for that region might embrace all of the operations in that region.
[fol. 100] They did not ask for the report from it as an operating company.

Mr. Bayly: We offer this letter as Brotherhood of Railroad Trainmen's Exhibit 1.

(The letter referred to is thereupon received in evidence and marked "B. R. T. Exhibit 1.")

The Witness: Under date of February 12th, 1941, we made further inquiry of the Commission with respect to the reporting to the Commission of information by the carrier pertaining to employees and their compensation, and that inquiry was made because of the reference in the Board's definition of a carrier to keeping its own payroll and the seniority rosters.

Each carrier reporting to the Commission furnishes a monthly statement and also a yearly statement of the number of the employes on the payroll at the middle of the month, the hours worked by them, and their compensation, separated as between each class or organization.

Mr. Lorenz replied on February 13, 1941:

"In answer to your letter of Febraury 12, I wish to advise that this Bureau does not receive separate reports of employes, service and compensation, either monthly or yearly, from the Michigan Central, C. C. C. & St. L., or Ohio Central Lines—leased lines of the New York Central Railroad Company. However, a separate monthly report is filed by the Boston and Albany, a leased line. In view of the relative statistical importance of the Boston and Albany in the New England Region, the New York Central agreed to this separate report monthly. Please refer to my letter of March 5, 1940, in regard to this matter."

Mr. Bayly: We offer that letter in evidence as Brotherhood of Railroad Trainmen's Exhibit No. 2.

(The letter referred to is thereupon received in evidence and marked "B. R. T. Exhibit 2.")

[fol. 101] The Witness: This advice from Mr. Lorenz strengthend the view of the theory that the New York Central Railroad Company and its directly operated leased lines constitute a carrier unit in that they met the qualifications laid down by the Board in its definition in the first annual report, and further, as I expect to submit evidence, it appears to be a consistent and logical view of what constitutes a carrier.

. . . . . .

Q. Mr. Cantley, when you are talking about a carrier you are talking primarily about an operating unit carrier. Is that true?

A. That is so. I have reference in each case where I say "carrier", I mean an operating carrier which reports the results of its operations to the Interstate Commerce Commission.

Q. Which primarily affects the employes involved?

A. Yes, sir. My reason for that is that operating carriers have direct supervision and control over the men who are employed on the railroad.

They are the carriers who deal with the employe representatives referred to by the Railway Labor Act, who agree with them upon the rates of pay and the other conditions under which they will be employed.

The lessor carrier, or property, has no control over rates of pay or working conditions of the employes who operate its property for the operating carrier.

Q. In other words, you are saying that the ultimate, general corporate policy, and the last word, as far as the executive is concerned, is at the headquarters of the carrier, which in this case is the New York Central Railroad Company?

A. Yes, sir, that is what I mean.

Getting back to what is reported for the New York Central in the Interstate Commerce Statistics of Railways in the United States for the year 1938, we find that it shows for the Boston and Albany:

"Subsidiary road leased to New York Central and Hudson River Railroad (now part of New York Central Railroad) November 5, 1899, effective July 1, 1900, for 99 years: [fol. 102] rent 8 per cent on capital stock, interest on bonds, taxes and organization expense."

For the Michigan Central it shows:

"Subsidiary road, leased January 2, 1930, effective February 1, 1930, for 99 years, annual rent interest on outstanding obligations, taxes, organization expense, and 50 per cent on capital stock held by parties other than the lessee."

Mr. Beyer: Leased to whom?

By Mr. Bayly:

Q. Yes, let's get those terms right. Who was the lessor? Who was the lessee?

A. As I stated in the beginning, this table is designed to show the single-track mileage and intercorporate relations of steam railway companies on December 31, 1938.

The New York Central Railroad Company is shown as the primary company, in bold type. Its subsidiaries, or roads in which it has a financial or stock interest are shown following that in lower case type and inset to indicate the degree of interest which the New York Central has in each of them; that is the inset varies, depending on the exact status of the property, so this table is then designed to show the relationship between all of these properties in which the New York Central has an interest and the New York Central Railroad.

Q. Mr. Cantley, Mr. Beyer wants to know who the lessor was. Who was the corporation that made the lease? That was the Michigan Central Railroad was it not?

A. That was the Michigan Central Railroad Company.

Q. And that lease went to the New York Central Railroad Company, lessee?

A. Yes.

Q. You state this was leased for 99 years. Does the record show whether that lease contained an option to renew or not?

Mr. Mulholland: Mr. Bayly, you are talking about saving time. I am wondering if we couldn't save time by all of us admitting that the whole relationship between New [fol. 103] York Central Railroad Company and its constituent lines is set up in Finance Docket 5690, reported in 150 I. C. C. 278?

There can be no question about it because it was all done through the approval of a certain part of the Interstate

Commerce Commission, and it is a public document and available to the Board.

* * * * * * *

Mr. Bayly: B. R. T. would like to introduce as its Exhibit 3 a photostat copy of pages 220, 221 and 222 of the Interstate Commerce Commission's Statistics of Railways in the United States, showing the New York Central Railroad and its subsidiary lines and their intercorporate relationship.

Mr. Lewis: May I at this time inquire whether the authentication of that report, as made by the New York Central System, or as made by the parties who made it, could be added? Off the record.

(Discussion off the record.)

Mr. Mulholland: Mr. Bayly has suggested to me if I will agree that Finance Docket 5690, reported in 150 I. C. C., 278, may be considered as before this Board, he will endeavor to only hit the high spots and endeavor to shorten the record materially.

Mr. Bayly: I so agree.

(The three pages of statistics referred to are thereupon received in evidence and marked "B. R. T. Exhibit 3.")

By Mr. Bayly:

Q. Go back to the Michigan Central and give us what we call the high spots on the relation between the company and the lessor.

A. For the Michigan Central Railroad, as shown in the table of single-track mileage and intercorporate relation of steam railway companies heretofore spoken of, it is reported:

"Subsidiary road. Leased Jan. 2, 1930, effective Feb. 1, 1930, for 99 years; annual rent, interest on outstanding ob- [fol. 104] ligations, taxes, organization expenses, and 50 per cent on capital stock held by parties other than the lessee."

"All rentals and charges for which the Michigan Central Railroad may become liable during the term of the lease shall be paid by the lessee, which owns the majority of the capital stock."

Q. Let's get back to details. Who is the lessor and who is the lessee?

A. Lessor, Michigan Central Railroad Company; lessee New York Central Railroad Company.

Q. And about the capital stock, who owns the majority of the capital stock of the Michigan Central Railroad Company?

A. The New York Central owns 99.44 per cent.

Q. And where is that small minority resting?

A. It is resting with a few minority stockholders.

Q. Of the lessor company?

A. Of the lessor company.

Q. Which is Michigan Central.

A. The number of stockholders of Michigan Central, as of December 31, 1939, was 86.

* * * * * * *

A. My conception of that is that the New York Central Railroad Company is in effect the Michigan Central Railroad Company, or that the Michigan Central Railroad Company is nothing more or less than the New York Central Railroad Company.

There is nothing for the Michigan Central Railroad corporate company to pay if the New York Central pays all of the organization expense.

Q. Is this true or not, that in order to preserve the small minority rights of those few remaining stockholders of Michigan Central it is necessary to keep up the corporate organization? In other words, that property just simply can't be taken unless by agreement it is bought. Is that your conception of it?

A. That is part of the consideration, that until the New York Central acquired 100 per cent of the stock the Michigan Central Railroad Company could not be entirely dissolved.

[fol. 105] Q. That is right.

A. There might be other reasons, however, for maintaining this corporate existence.

Q. Do you want to say anything else regarding the Michigan Central?

A. That is all.

Q. Let's go on to the Big Four relation and hit the high spots there.

A. The C. C. C. & St. L. Railroad, or Big Four, is shown in the table above referred to as:

"Subsidiary road. Operated under lease dated January 2, 1930, effective February 1, 1930, for 99 years; annual rent, interest on outstanding obligations, taxes, organization expenses, and 5 per cent on preferred stock and 10 per cent on common stock held by parties other than the lessee. All rentals and charges for which the C. C. C. & St. L. Railway may become liable during the term of the lease shall be paid by the lessee which owns the majority of capital stock."

The Toledo & Ohio Central Railway and the Kanawha & Michigan and the Zanesville & Western are also shown in this same table as subsidiary roads of the New York Central under lease, and they collectively are now known as the Ohio Central Lines.

I won't go into the details of those leases, but they are all substantially the same, in effect.

Q. Substantially the same as the Michigan Central?

A. Well, in their effect with respect to the relation of these companies to the New York Central Railroad Company the New York Central Railroad Company has a stock interest in certain properties, including the Pittsburgh & Lake Erie Railroad Company, and others which are sometimes referred to, together with the New York Central and its leased lines, the whole thing collectively as the New York Central Railroad System.

The Pittsburgh & Lake Erie and these others, such as the Indiana Harbor Belt, report separately to the Interstate Commerce Commission, and are shown in this table to which I have been referring to intercorporate relationships as, "operating road, subsidiary," thus distinguish-[fol. 106] ing them from the leased lines which are merely referred to as subsidiary roads.

This lease of the Michigan Central Railroad and the Big Four Railroad took place February 1, 1930.

By referring to the Interstate Commerce Statistics of Railways for 1929 we find that in that year the Michigan Central and Big Four were shown as "operating road, subsidiary," and made separate reports to the Interstate Commerce Commisison.

I did not go back to the beginning when the Boston & Albany and the Ohio Central Lines were leased. I didn't

care to burden the record with that, but it can be supplied if necessary, as to how they appeared in this report.

I only mentioned the Michigan Central and Big Four by way of illustration to show how the Commission distinguishes between a pure subsidiary road and an operating road subsidiary.

The manner in which the Big Four and Michigan Central were shown in the 1929 report is illustrated by Exhibit 4.

Q. Would you say, Mr. Cantley, that substantially the same leasehold arrangement was true as to the O. C. L. and B. & A.?

A. In so far as its relation to the New York Central Railroad Company from an operating standpoint is concerned, yes; the terms of the lease may be different; in fact, they are different.

Q. Is this true? We are asking this Board in its interpretation of what is a carrier to come to the conclusion that these leasehold lines are territorial subdivisions but in reality a part of the New York Central Railroad Company? Is that right?

A. Yes, sir, that is my point.

Right in that connection I would like to say that the Pennsylvania Railroad is made up of innumerable leased lines, or as they are shown in the Interstate Commerce Commission Statistics of Railways, subsidiary roads.

The Pennsylvania makes one report for all of its operations, including the Pennsylvania Railroad proper and its leased subsidiary lines.

[fol. 107] Q. To the Interstate Commerce Commission?

A. Yes. The Pennsylvania Railroad, as has been stated here, is commonly considered as a unit.

The comparison I am endeavoring to draw is this.

The operating unit of the New York Central is no different in effect than that of the Pennsylvania.

I conceive the New York Central Railroad and its leased lines to be a carrier, as defined in the Board's first annual report. Likewise the Pennsylvania Railroad and its leased lines is a carrier, as defined in the Board's first annual report.

If this is not true then each territorial unit, or each line of railroad which maintains a corporate existence may be considered a unit for representation purposes, and the Pennsylvania Railroad (I am only using that as an ex-

ample) as well as any other similarly situated may be subdivided into innumerable units for representation purposes.

In other words, if the leased property is a unit, rather than the operating property, then there is practically no limit to which you may go in establishing representatives of employes.

The Pennsylvania Railroad is the best example I know of for the reason that at one time there were separate so-called schedules or agreements containing rates of pay and working conditions between the employes and the management on the several subsidiary properties.

. . . . . .

(Discussion off the record.)

The Witness: I just wonder whether I have made myself clear to the Board as to what I have in mind.

I understood that we were endeavoring to establish what is a carrier, and my understanding is that it must be either one of two things—an operating entity, including its leased properties, or a corporate entity which owns each of these leased properties.

[fol. 108] By Mr. Bayly:

Q. That is a series of carriers?

A. Yes. If the former conception is what the Board meant by its statement in its first annual report, then the New York Central Railroad and its leased lines is a carrier.

If the latter conception is what the Board meant, then the Pennsylvania Railroad or the XYZ Railroad which is composed of numerous leased lines is not a carrier, but each of those leased lines is a carrier, and if the practice which has been followed heretofore is continued, that the employes of each unit, each carrier unit, may select their representatives, then the employes on each of the leased units may select whatever representative they desire, and there may be instead of one set of representatives ten or eleven or twelve or fifty sets of representatives on a large railroad for each class of craft of employes.

Q. In other words, you might have ten times twelve or 120 instead of how many—ten or twelve?

A. Yes.

Q. On the Grievance Committee?

A. Yes.

Q. Mr. Beyer wants to know a little bit about the conditions existing in the so-called territorial subsidiaries before the leases were made, as to methods of report.

Mr. Beyer: Yes, with respect to the Brotherhood of Railroad Trainmen.

In other words, tell us what happened on the New York Central when an evolution took place toward amalgamating, as it were, for operating and other purposes the whole series of lines, and how in turn did that affect the evolution of the Brotherhood of Railroad Trainmen in its relationship to the New York Central.

The Witness: I will deal with the major units.

Mr. Beyer: That's right.

The Witness: This multiplicity of agreements that has been referred to as existing on the New York Central is the heritage or outgrowth of the past. At one time it was what is known as the New York Central and Hudson River [fol. 109] Railroad. There was a separate agreement between employes and the management.

Mr. Beyer: You are talking now about the railroad trainmen?

The Witness: I am talking about the yardmen.

Mr. Bayly: That is the unit involved here.

Mr. Beyer: I understand, but it is all right to also talk about the other craft represented.

The Witness: The New York Central and Hudson River extended from New York to Buffalo.

There was then the Lake Shore and Southern Railroad from Buffalo to Chicago with an agreement covering yardmen, negotiated by the management and employes; I will say agreement or agreements.

Then there was the Michigan Central Railroad from Buffalo to Canada and Detroit to Chicago, with an agreement.

The Cleveland, Cincinnati, Chicago & St. Louis Railway, roughly between Cincinnati and Chicago, with an agreement.

There was the Cincinnati Northern Railroad with an agreement; the Evansville, Indianapolis & Terre Haute with an agreement.

The Toledo & Ohio Central Railroad with an agreement and the Kanawha & Michigan with an agreement, and several other smaller ones.

As time went on the scope of the agreements has not materially changed, but it could well have been that the employes and the management could have gotten together and had the System agreement covering the New York Central Railroad and all of its operations, its leased lines, but they just haven't done it.

Q. That is within each craft?

A. Yes. However, there is now consolidated the Cleveland, Cincinnati, Chicago & St. Louis and Cincinnati Northern and the Evansville, Indianapolis & Terre Haute under one cover. We have gone that far in consolidation.

Mr. Beyer: That is as far as yardmen are concerned?

[fol. 110] The Witness: I was just talking about yardmen.

At the present time, so far as yardmen are concerned, there is an agreement on the New York Central Railroad Lines East, formerly New York Central & Hudson River, between the management and the Brotherhood of Railroad Trainmen.

There is an agreement on the New York Central Lines West, Buffalo to Chicago, between the management and the Brotherhood of Railroad Trainmen covering certain yards.

Also an agreement between the management and the Switchmen's Union of North America covering other yards.

On the Big Four there is an agreement between management and the Brotherhood of Railroad Trainmen.

On the Michigan Central there is an agreement between the management and the Switchmen's Union of North America covering the yards west of the Detroit River.

An agreement between the management and Brotherhood of Railroad Trainmen covering the yards east of the Detroit River in Canada.

In the Chicago Switching District there is an agreement between the New York Central and the Brotherhood of Railroad Trainmen covering yardmen in the Chicago Switching Territory.

On the so-called Boston & Albany there is an agreement between the management and Brotherhood of Railroad Trainmen.

Summing that up, the Brotherhood of Railroad Trainmen is at present the representative of the Yardmen on all parts of the New York Central Railroad and its leased lines, except the Michigan Central west of Detroit and approxi-

mately half of the yards on the New York Central Lines west of Buffalo.

. . . . . .

Q. Mr. Cantley, there was a change in the method of reporting here on behalf of the Company, from the number of reports to a unified report. What is your interpretation [fol. 111] as to why that was done and with reference to the time it was done?

A. The reports of the Interstate Commerce Commission's Statistics of Railways show that whenever a property ceases to be an operating company and becomes a lessor that thereafter it does not make reports to the Interstate Commerce Commission of results of operations. Those results are included in the lessee's reports.

Q. Then is this a fair conclusion, that the operating company made these reports in compliance with the law, as interpreted by the I. C. C.?

A. That is my understanding, that they are complying with instructions or requirements of the I. C. C.

I would like to call attention to the fact that for the New York Central, it will be seen from Exhibits 3 and 4, in 1929 the New York Central Railroad Company was shown as owning 3,727 miles; operating 6,931 miles.

In that same year the report shows for the Big Four owning 1,697 miles; operating 2,398 miles.

For the Michigan Central owning 1,182 miles; operating 1,858 miles.

But when we go to 1938 we find that neither the Big Four nor the Michigan Central are shown as operating any mileage, and the mileage operated by the New York Central is increased correspondingly, which in my estimation means that the Michigan Central and Big Four West would not be operating companies in any respect after the leases effective February 1, 1930.

Mr. Bayly: The reporter suggests that we didn't offer formally Exhibit 4. It is Statistics of the railways in the United States, Section C, Table showing single-track mileage and intercorporate relation of steam railway companies, December 31, 1938, Eastern District.

(The table referred to is thereupon received in evidence and marked "B. R. T. Exhibit 4.")

Mr. Bayly: BRT would like to offer in evidence Exhibit 5, showing stock ownership of New York Central Railroad Company and leased lines and subsidiaries.

[fol. 112] (The document referred to is thereupon received in evidence and marked "B. R. T. Exhibit 5.")

The Witness: This Exhibit No. 5 is a photostat copy of page 345 of Oliphant's Earning Power of Railroads 1939, published by James H. Oliphant & Company, New York, and is used because of its conciseness.

It shows the stock ownership of the New York Central Railroad Company in the Big Four, the Michigan Central and the Toledo & Ohio Central, or in other words the Ohio Central Lines, as well as some others.

It is not intended to show the New York Central stock ownership in all of its roads, but primarily those under consideration here.

In connection with that I find on page 347 of this same publication this text:

"Big Four—in December, 1921, N. Y. C. offered one share of its capital stock for one share of preferred and 80 shares of its stock for 100 shares of common stock of Cleveland, Cincinnati, Chicago & St. Louis Railway. Therefore N. Y. C. had owned none of the $9,998,500 Big Four, 5 per cent preferred stock but $30,207,700 of the $47,028,700 common stock.

Chiefly by this means New York Central's holdings were increased to $46,302,233 (98.45 per cent) of the common stock and $8,516,600 (85.18 per cent) of the preferred stock held on December 31, 1938.

During 1922 N. Y. C. issued in exchange $18,384,569 of its own stock, and during 1923, $255,460.

The point is that the New York Central exchanged its own stock for Big Four stock—just another indication of the close community of interest of the two railroads. They are practically one and the same.

* * * * * * *

Mr. Lewis: Are you asking the Big Four employes be included in the eligible list?

The Witness: Yes, sir.

Mr. Lewis: On the basis of this intercorporate relation?

[fol. 113] The Witness: For the reason that the opera-

tions on the Big Four Railroad are now mingled and reported to the Commission by the New York Central Railroad Company just as though there never had been a Big Four Railroad. The same for the Michigan Central, Ohio Central Lines, and Boston and Albany.

The Pittsburgh & Lake Erie, to which you refer, is a stock ownership, partial stock ownership road, which is operated independently, reports to the Commission independently.

Of course, the New York Central Railroad, having a large stock interest, has something to say of its policies, but nevertheless it is a separately operated property.

Mr. Bayly: Does that clear up the question, Mr. Lewis? In other words, we are claiming these lines that are operated under a leasehold arrangement, that is the Michigan Central, C. C. C. & St. L., Big Four, and B. & A., are all reported to the I. C. C. in one joint report, as decided by this Board in its first annual report.

* * * * * * *

By Mr. Bayly:

Q. Briefly, Mr. Cantley, what does that agreement contain; just a general explanation to the Board here.

A. Following the passage of the Transportation Act of 1933 the employes became quite concerned about what the effect of consolidation and coordination of railroads was going to have on them.

They requested the managements of all railroads with whom they had agreements (I am speaking of all classes of employes now) and all organizations representing those employes requested the railroad managements to meet with them and see what could be worked out in the way of protection for a man who had been displaced on his job because two facilities were consolidated.

This agreement, which is captioned, "Agreement of May, 1936, Washington, D. C.", is signed for the participating carriers by a committee appearing on page 8, and for [fol. 114] the employes by the several executives of the several organizations whose names appear on pages 8, 9 and 10. This agreement was the result of the conferences.

There is an appendix to this agreement which lists the carriers parties to the agreement.

Under that caption there are two columns, the first headed "Carrier", and the second headed "Properties and Operations Included in the Authorization as Part of, and to be considered as part of, the carrier listed in Column 1."

The intent of that second column is that any consolidation or coordination of facilities on the parent road with that of a line shown in the second column would not be affected by this agreement and not require the payment of any compensation to employes who might be displaced or whose positions they had.

For the New York Central it shows this, in column 1:

"New York Central Railroad Company," and in column 2, "All leased lines."

I was present at the negotiation of this agreement and heard the discussion, and it was the position of the management of the New York Central Railroad Company, who was represented on the Committee by Mr. Walber, that the all-leased lines were an integral part of the New York Central Railroad Company, and therefore any coordination or consolidation made between them, or the New York Central Railroad proper, were not affected by this agreement. In other words, it was all one railroad, and that is in line with our understanding of what the New York Central Railroad Company is, and what we requested the Board to find in our invocation for their services in our dispute with the representation of yardmen.

Since the passage of the amendments to the Railway Labor Act a question involving representation of dining car stewards employed on the New York Central System arose, and the dining car employes, Union Local 351, Hotel and Restaurant Men's International Alliance, asked the Na- [fol. 115] tional Mediation Board to find that they were the representative of the dining car stewards employed on that portion of the New York Central Railroad west of Buffalo.

The Board held a hearing in which were involved this organization I have referred to and the Brotherhood of Railroad Trainmen.

Following the hearing they found in their certification R-263 that an election on the System basis was proper. That is to say the dining car stewards employed on the New York Central Lines West and East and the Michigan Central and Big Four was proper.

. . . . . .

Some time ago, to be more exact during the year 1937, the Committee of the Brotherhood of Railroad Trainmen representing trainmen and yardmen of the Pennsylvania Railroad Lines West of Pittsburgh, which was formerly known as the Pennsylvania Lines West of Pittsburgh, and on which property there was more than one agreement, but which in 1920 was brought under the System agreement through negotiation between the Committees for the entire property and the management, made request on the management for adoption of a separate schedule for that portion of the property.

The management declined to concur in the request, and we thereafter invoked the services of the National Mediation Board in the dispute which had arisen, and the Board held that the property could not be divided for representation purposes; that it must be dealt with as a whole.

Mr. Mulholland: Give the number of that certification.

The Witness: The Board made no formal certification or formal finding with respect to the matter, but they held a hearing or conference in their office in Washington on November 23, 1937, at which time Members Leiserson and Beyer were present, attorney Donald Richberg, and a Vice President of the B. of L. F. & E., and a Vice President of the B. of R. T.

[fol. 116] As a result of developments in that hearing the Brotherhood of Railroad Trainmen withdrew its invocation for the Board's services.

I don't feel qualified to speak for the B. of L. F. & E., unless it is desired to do so, as to what happened there with them.

As illustrating the view taken in the past I would like to refer to Decision No. 1728 of the United States Railroad Labor Board, dated March 22, 1923, and it will be found in Volume 4 of the decisions of that Board.

"Question: Dispute regarding rules and working conditions covering car department employes on New York Central Railroad Company (West of Buffalo)."

The organization petitioning the Board was the American Federation of Railroad Workers.

The Board said:

"The evidence indicates that an agreement has been in effect between the carrier and the American Federation of

Railroad Workers covering carmen on the railroad west of Buffalo, which agreement was considered in force and effect up to the date said negotiations were entered into."

Those were negotiations with respect to rules covering rates of pay and working conditions. The Board further said:

"Subsequent to the issuance of Decision No. 119, representatives of the Railway Employes' Department, A. F. of L. (Federated Shop Crafts), protested against the action of the carrier in entering into negotiations with the American Federation of Railroad Workers, taking the position that Principle 15, Exhibit B, of Decision No. 119, did not contemplate the separation of any portion of a railroad to determine proper representation, but gave to the organization having the majority representation on the entire railroad the right to negotiate rules and working conditions.

[fol. 117] "Decision—The Railroad Labor Board decides that Principle 15, Exhibit B, of Decision No. 119 gave to the organization having the majority representation on the entire railroad the right to negotiate rules and working conditions governing the classes of employes so represented.

"If a dispute exists as to the proper representation of carmen on the entire railroad a ballot shall be taken in accordance with the manner prescribed in Decision No. 218.

"If no dispute exists as to the proper representation of carmen on the entire railroad, the rules as set forth in Decision No. 222 and addenda thereto shall be made applicable to the employes in question and incorporated into the agreement with the organization having a majority representation on the entire railroad."

"Note—The term 'entire railroad' as used herein means the New York Central Railroad Co. proper (Buffalo and East, and West of Buffalo), and not separate railroads coming under term 'New York Central Lines'."

It will be noted that that decision was rendered March 22, 1923, prior to the time the Michigan Central and Big Four were leased, and that it recognized the entire property as a unit.

Q. Mr. Cantley, in a brief word, what are we claiming for that?

A. We claim for that that it illustrates that even at that date the principle of the entire railroad being a unit was recognized by a board created under the provisions of the Transportation Act of 1920.

* * * * * * *

I have before me here a photostat copy of page 134 of the Official Railway Guide for December, 1940.

I believe most everyone is familiar with that. It contains primarily passenger train time tables but for every railroad it gives in addition a list of the officers and some indication of the scope of the property.

For the New York Central System the caption is: "The New York Central Railroad Company; Pittsburgh & Lake [fol. 118] Erie Railroad Company; Indiana Harbor Belt Railroad Company; Chicago River & Indiana Railroad Company; Chicago Junction Railway (C. R. & I. R. R. Co. lessee)."

It will be noted there that while the caption shows "New York Central System" the description of the railroads comprising that system does not mention the so-called Boston & Albany, Michigan Central and Big Four nor the Ohio Central Lines.

The Pittsburgh & Lake Erie Railroad Company and Indiana Harbor Belt, Chicago River & Indiana and Chicago Junction are separate reporting companies to the I. C. C.

That leaves only the New York Central Railroad Company which also reports to the I. C. C. as an operating company, but which as has been said this morning includes in its reports the results of operation for the Boston & Albany, Big Four, Michigan Central and Ohio Central Lines, and we take this as an indication further that the New York Central Railroad Company is the unified entity under a single management, and that the term "New York Central Railroad Company" embraces all of that unified single management operation.

When we look down over the list of officers we find that going to the Division Superintendents that the territory is shown as divisions of the property, the same as any other railroad which might not be made up of leased lines and the parent company.

Q. You are talking about the property of the New York Central Railroad Company?

A. Yes.

Q. All right. Who are those officers? Have you got them there? Where are they located?

A. Well, it gives of course the executive officers at New York: F. E. Williamson, President; R. D. Starbuck, Executive Vice President; J. Aronson, Vice President, Law; W. F. Place, Vice President, Finance; R. E. Dougherty, Vice President, Improvements and Developments; John G. Walber, Vice President, Personnel, and a number of others having jurisdiction over various departments.

[fol. 119] There is one in particular, Mr. B. J. Bohlender, Manager, Dining Service, which I am told and which I believe will be verified by subsequent witnesses, has jurisdiction over the entire property.

These executive officers are all located in New York City.

Q. In other words, you are claiming, are you, that this shows a single, unified executive management for the carrier as a unit, they all having their offices in one point, namely, Park Avenue, New York?

A. That is what it means to me.

Mr. Bayly: I offer in evidence B. of R. T.'s Exhibit 7.

(Photostat copy of Official Railway Guide is received in evidence and marked "B. of R. T.'s Exhibit 7.")

* * * * * * *

The Witness: In actual practice a member of the Brotherhood of Railroad Trainmen who may be employed under a contract negotiated by the Order of Railway Conductors may have his grievance handled by the Committee of the Brotherhood of Railroad Trainmen, and conversely a member of the Order of Railway Conductors, who may be working under a contract negotiated by the Brotherhood of Railroad Trainmen, may have his grievance handled by a committee of the Order of Railway Conductors.

Likewise, a member of the Switchmen's Union, working under a contract negotiated by some other organization, may have his grievance handled by a representative of the Switchmen's Union, if he desires.

* * * * * * *

Q. Now, Mr. Cantley, I want to ask you one more question.

There is no dispute, as I understand it, here as to the appropriate unit, that is the craft or class, in so far as the employes are concerned. Is that right?

A. I know of no dispute as to what employes are here involved, in so far as they may constitute a craft or class.

[fol. 120] The question, as I understand it, is who shall represent the yardmen, and it is commonly accepted that the term "yardmen" embraces car retarder operators, yard foremen, yard helpers and switchtenders, regardless of where employed.

Q. And that has heretofore been held as a group or an appropriate unit for purposes of bargaining. Is that right?

A. Yes, sir.

* * * * * * *

Cross-examination.

By Mr. Mulholland:

Q. Mr. Cantley, I would like to see if you can clear up a few matters for me.

I understood you to say you prepared this invocation for the services of the Board in the case we are now hearing.

A. That is right.

Q. And that involves yardmen, including foremen or conductors, helpers, brakemen, switchtenders and car retarder operators in the yards?

A. That is right.

Q. It is my understanding that your invocation relates to employes of the New York Central Railroad Company.

A. That is the way it is captioned, yes, sir.

Q. Have you made any particular investigation to ascertain what the New York Central Railroad System is?

A. The New York Central Railway System, as commonly referred to I believe, includes New York Central Railroad, its leased lines, and the lines in which it has a stock interest.

I might say here that if I were submitting that invocation again I would not use the term "System".

Q. There are two organizations that you have been talking about, one the New York Central Railroad Company, which is a corporation, and another the New York Central Railroad System, which is an entirely different sort of an organization, isn't it?

A. The New York Central System has no particular identity, I would say.

[fol. 121] Q. You have called attention here to Exhibit 7, for some purpose, in which you have indicated the New York Central Railroad Company, Pittsburgh & Lake Erie Railroad Company, Indiana Harbor Belt Railroad Company, Chicago River & Indiana Railroad Company are at least in the system.

A. That is right, and we have also stated in connection with this testimony that the territory which we have in mind as the New York Central Railroad is the former Michigan Central, the former Big Four and the former Boston & Albany and the former Ohio Central Lines territory.

Q. I am talking now about the invocation upon which any certification issued by this Board must be predicated, and that invocation is in reference to alleged employes of the New York Central Railroad System.

Mr. Bayly: Counsel is right in that wording. It does refer to the System. I would like to say that inasmuch as the proof isn't all in——

. . . . . .

Mr. Bayly: (Continuing)—yet our contention is, and what we mean is, the New York Central Railroad Company, so that we would like at this time to amend instead of saying the New York Central Railroad System to say the New York Central Railroad Company, because we are not claiming anything under the System but only the New York Central Railroad Company, so that I think that will eliminate any questioning along that line.

. . . . . .

The Witness: May I answer that, if the Board please?

The Chairman: Yes.

The Witness: I believe you will find in my testimony that I said I was not going into the detail of the relations of all these small roads to the larger units known commonly as the Michigan Central, Big Four and Ohio Central Lines. [fol. 122] You will find in my testimony I called attention to the fact that the Cincinnati Northern and the Evansville, Indiana & Terre Haute had been combined with the Big Four, or C. C. C. & St. L.

The leases by which the Big Four took over those properties occurred at a different date than the lease by which the New York Central took over the Big Four, but today those lines as such, as operating entities, have ceased to exist and are part of the larger territory known as the Big Four.

The Kanawha & Michigan is likewise leased to the Toledo & Ohio Central, and has been merged. It has really lost its identity.

I called attention to the fact that in this Statistics of Railways the major company was indicated as the New York Central Railroad Company in bold type; that underneath that the leased lines were shown indented to a more or less degree, depending on how and with whom they had been merged in the past, and that for the sake of brevity we would speak of the entire whole as the New York Central Railroad, the Michigan Central, the Big Four and the Ohio Central Lines, the intent being that that would carry with it all these others which Attorney Mulholland has mentioned.

Mr. Mullholland: I wouldn't object to their being included. What I am objecting to is those you are excluding. You are excluding Pittsburgh & Lake Erie Railroad Company and the Indiana Harbor Belt Railroad Company, two of the largest.

The Witness: That is right. I made specific reference to those in my testimony and spoke of them as operating roads which were not to be considered.

Mr. Mulholland: But they are part of the New York Central System.

The Witness: As sometimes spoken of.

Mr. Bayly: If the Board please, what we are saying is this, as I see it.

[fol. 123] It is true that this invocation used the word "System". The proof offered so far, and the proof that will be offered by, if you want to call the B. of R. T. the complainant or the invoker, or whatever you call him, will only refer to and cover the New York Central Railroad Company, which is and includes the leased lines, and of course anything they own, so that what I am suggesting to the Board is that we consider this as limited and the name which should have been in there be substituted "New York Central Railroad Company."

The Witness: May I continue my answer to Attorney Mulholland?

The Chairman: Yes.

The Witness: If the Board will refer to our invocation it will be found that it reads this way:

"A dispute has arisen among the employes of New York Central Railroad System * * *." The asterisks refer to a foot-note reading, "New York Central Lines-East and West; Big Four; Michigan Central; Ohio Central Lines, and Boston and Albany."

It clearly sets forth in our invocation what the scope of it was.

Mr. Mulholland: Unfortunately we have never seen that.

The Chairman: In our notice of hearing, without specific reference to the New York Central Railroad Company, we quoted from the application of the petitioner, "New York Central Railroad System, which System, according to the Brotherhood, is composed of the New York Central Lines, East and West," and the lines he has just mentioned, and then further we said that, "Whether this basis of representation should be by the yardmen as employed on individual lines or railroads and lines of the New York Central System, by some portion or portions thereof, or by some combination of these lines or railroads," having specific reference to the Ohio Central Lines, the C. C. C. & St. L., the Michigan Central and Boston & Albany; so for the purposes [fol. 124] of this hearing the Indiana Harbor Belt or the Pittsburgh & Lake Erie Railroads are not involved.

By Mr. Mullholland:

Q. Mr. Cantley, I want to direct your attention to the argument you put forth in reference to the action of the Board, or to the conclusions of the Board, in its 1935 first report, and which I believe you use as the foundation for your argument here.

Are you familiar with case R-570, in which a certification was issued by this Board, March 21, 1940, on the Boston & Albany Railroad Company, covering the power house employes, in which this certification introduces itself by saying, "The services of the National Mediation Board were invoked," and so forth, "as to who may represent power house employes and railway shop laborers employed by the

Boston & Albany Railroad Company," and it certifies a certain group as the representation of those employes.

You have had like experiences with the New York Central Railroad Company since 1935 in invoking the services of this Board to settle disputes of one of the constituent railroads, have you not?

A. I don't recall any.

Q. Let me call your attention to case R-452, in the matter of representation of the employes of the Boston & Albany, road conductors and assistant conductors.

A. That is right.

Q. You participated in that election, did you not?

A. That is true, yes.

Q. And at that time a certification was issued for this class or craft of employes employed only by the Boston & Albany Railroad?

A. That is right.

Q. I call your attention to Case R-460 in the matter of the representation of employes of the Boston & Albany Railroad, road brakemen, flagmen and baggagemen. You participated in that, did you not?

A. We didn't make the invocation.

Q. But you had your name on the ballot.

A. We were obliged to have it on there.

[fol. 125] Q. And there, again, the Board issued a certification for this class of employes of the Boston & Albany Railroad?

A. That is right, because in neither of those cases was there any opposition or any question raised as to the appropriate unit.

I will admit that had we been a little keener we might have been in a hearing then such as we are in now.

Q. In other words, you hadn't thought of it at that time? Now, I direct your attention again to Case R-161 in the matter of representation of employes of the Ohio and Central Division of the New York Central yardmasters, assistant yardmasters and relief yardmasters. Are you familiar with that?

A. Yes.

Q. Here, again, the Board issued a certification covering those employes of the Ohio Central Division.

A. That all sounds like. I was asleep again when I said I didn't recall any. Now let me give you another one, the Big Four.

Q. I call your attention also to Case R-113 in the matter of representation of employes of Cleveland, Cincinnati, Chicago & St. Louis Railroad, yard conductors, car retarder operators and switchtenders, this invocation involving employes of the Cleveland, Cincinnati, Chicago & St. Louis Railroad. You participated in that, did you not?

A. We were required to.

Q. Here again the Board issued its certification.

A. And again we were asleep at the switch.

Q. In other words the Board on quite a number of occasions has since 1935 indicated its interpretation of the law applicable to this situation.

A. In the absence of any opposition, yes.

Q. And in several of these cases you participated and failed to call their attention to their omission of their duties.

A. That is not a bar against recovering yourself later on.

Q. Have you at any time, as an organization, invoked the services of the Board for any one of the railroads making up the New York Central Company?

A. Yes. We invoked in the case of the yardmasters on the Ohio Central Lines.

[fol. 126] Q. That was since 1935?

A. That is right, and I believe we invoked on the matter of representation of conductors on the Boston & Albany.

Q. You represent certain groups of employees on the New York Central Lines West that were so selected under the provisions of the Railway Labor Act, do you not?

A. No, sir. The representation there is the same, as the Switchmen's Union of North America was found to exist when the amendments to the Railway Labor Act were passed June 21, 1934, and such representation was not disturbed by the law nor was it disturbed in any other case where representation existed and had been recognized prior thereto.

Q. And that is because you have had, up until now, no dispute? No one has questioned your right to represent the men?

A. That is right.

Q. Who do you represent on the lines west besides the yardmen at certain specified yards?

A. Road trainmen and such dining car stewards as may happen to be confined to that territory.

Q. And no one has ever questioned your right to represent these yardmen in the specified yards?

A. Not to my knowledge.

Q. On the Lines East, that is, the New York Central Lines East, you represent all of the yardmen?

A. That is right.

Q. And no one to date has questioned your right to represent those men?

A. That is right.

Q. On the Ohio Central part of the New York Central Company you also represent the switchtenders or the yardmen at what point?

A. We represent them at all points with the possible exception—I am not prepared to testify as to this, we will have another witness as I understand it—of some territory in the Toledo District which has been merged with the Michigan Central or New York Central Lines West territory.

Q. And no one has to date questioned your right to represent those men?

A. That is right.

Q. You also represent the yardmen on certain subdivisions, possibly the Ohio Central and the Zanesville & [fol. 127] Western?

A. The Zanesville & Western and Kanawha & Michigan, in the event there are any yardmen on those properties.

Q. In other words, you represent every one now controlled by what we might call the Ohio Central properties?

A. With the possible exception of some merged territory at Toledo, if some exists; I couldn't say positively.

Q. Calling your attention to the Michigan Central Railroad you have certain agreements on that road, but are they exclusive of yardmen and switchmen west of Detroit, west of Windsor?

A. Yes, road trainmen west of the Detroit River and road trainmen and yardmen east of the Detroit River.

Q. So far as the yardmen are concerned no one is questioning your right to represent those men?

A. You mean west of the Detroit River?

Q. I mean east of the Detroit River.

A. No.

Q. You are now representing them?

A. That is right.

Q. On the Big Four, that is the C. C. C. & St. L., you represent yardmen on that property?

A. Yes, sir.

Q. All of them?

A. Yes, sir.

Q. And no one has questioned your right to represent those men?

A. That is right.

Q. You also have certain other representation on the Big Four, haven't you?

A. We represent road trainmen there.

Q. Referring to the Boston & Albany you there represent all of the yardmen?

A. That is right.

Q. And no one has questioned your right to represent those men?

A. That is correct.

Q. So that you are now, without any questions being raised or any dispute being involved, representing all of the yardmen employed by the New York Central Railroad Company except certain yards on the New York Central West and Michigan Central?

A. That is correct, yes—I beg your pardon. Did I understand you correctly to say "without any dispute being raised"?

[fol. 128] Q. Yes, with the exception of these two cases.

A. I might ask, raised by whom?

Q. Anyone.

A. No one has challenged our right to represent the yardmen, as previously enumerated here. However, the law reads that should a dispute arise among the employes with respect to who are the representatives, and I believe that there is such a dispute——

Q. Is there a dispute anywhere on the New York Central Lines East as to your right to represent these men?

A. Not that I know of, no.

Q. Is there any dispute on the Boston & Albany as to your right to represent these employes?

A. Well, if you mean the leased property of these various units, my answer is no, for the Boston & Albany.

Q. Is there anyone disputing your right to represent these men on the Big Four?

A. On the leased property on the Big Four?

Q. Yes.

A. No.

Q. So that if there is any dispute upon which this Board could predicate jurisdiction in this case, it grows solely out of your desire to get the switchmen out of the Lines East and off the Michigan Central, doesn't it?

A. My understanding of the dispute is it grows solely out of the dispute among the employes which has arisen, and that they are the ones who are interested primarily in who the representatives shall be for the railroad as a whole.

Q. But can't we agree upon this, that that is the only dispute there is here, if there is any at all?

A. A dispute among the employes?

Q. Yes.

A. Yes.

Q. You approached this hearing pretty well satisfied that if you can combine all of the men you represent on the various segments of the New York Central Railroad and vote them against the switchmen in the few shops on the Lines West on Michigan Central you could take it over?

A. No, I wouldn't say that that was altogether a fact. [fol. 129] We approached this hearing with the thought that if the Board meant what we construed it to mean in its first annual report, where it defined a carrier, that the yardmen of the New York Central Railroad and its leased lines were entitled to representation as a class unit for the entire property——

Q. I am talking now about any possible dispute and the probable outcome of it.

Am I correct in my statement that you approached this hearing, putting it this way, pretty well satisfied if the Board will certify your organization you can wipe the Switchmen's Union off the properties?

A. I couldn't admit that that was the motive.

Q. I am asking for the fact, not the motive.

A. The fact is just plain common sense. You wouldn't engage in any game in which you thought you would lose.

Q. Isn't that what is back of this whole thing?

A. No.

Q. Practically every other organization, I mean of the twenty-one railroad labor organizations, have contracts with these segments of New York Central Lines covering territory very similar to yours?

A. That is right.

Q. They are mostly all limited to Lines West, Lines East, the Boston & Albany, the Big Four, and Michigan Central?

A. And I explained why that was.

Q. I am just asking you the fact.

Mr. Bayly: May I ask that the witness be given the privilege to explain his answer.

Mr. Mulholland: I will gladly give him that without any request for it.

The Witness: I explained before that these several agreements were the heritage from the days when these units, if you want to call them such, were separately operated reporting carriers to the Interstate Commerce Commission; that there had been no move on the part of either management or the representatives of the employes to [fol. 130] adopt a system agreement such as there had been on certain other properties.

. . . . . .

Q. You introduced the so-called Washington Agreement as Exhibit 6. You make no contention that this agreement has any effect as interpreting the law applicable to this investigation, do you?

A. I make a contention that it has a very definite indication of the conception of the management as to what constituted the railroad unit when that agreement was under consideration.

. . . . . .

A. There is another heritage from the ancient days. In the early days it was the desire apparently of the men to have their seniority confined to individual yards, and from time to time, even within my experience, there have been moves to extend that seniority by either a dovetailed process of rosters or placing one over the other and retaining the prior rights in the individual yards.

Q. They have never gotten anywhere, have they? How about the New York Central Lines?

A. There are a lot of those in existence, I have been informed, and it can be verified by a subsequent witness, that in the Toledo territory the Switchmen's Union of North America has combined the Michigan Central and New York Central Lines West yard rosters.

Q. But that is all the same yard, isn't it?

A. No, sir. It was formerly two separate operating jurisdictions. There may be others.

Mr. Mulholland: That is all.

* * * * * * * *

E. F. SWAN was called as a witness on behalf of the Brotherhood of Railroad Trainmen and, being duly sworn, testified as follows:

[fol. 131] Direct examination.

By Mr. Bayly:

Q. Will you give the reporter your name?

A. My name is E. F. Swan. I reside at Kankakee, Illinois. I am an employe of the New York Central Railroad Company holding seniority rights as a conductor in road train service, and presently furloughed for the purpose of serving as Chairman of the General Grievance Committee of the New York Central Lines West.

* * * * * * * *

Q. Mr. Swan, in furtherance of the testimony and the claim asserted here in support of the principles enunciated by the Board in its first annual report, what can you tell the Board regarding the payroll arrangement of the New York Central with reference to showing a centralized control in the hands of the executives of the New York Central Railroad Company?

A. The timekeeping department, which handles the payrolls for the New York Central Lines West, the Michigan Central, the Big Four and the Ohio Central Lines, has been established at Detroit, Michigan.

Q. That is the so-called lessee lines?

A. That is right.

Q. A little more about being established. What do you mean? The money goes in there and the men are paid out of that territory or location?

A. The time slips that are made out by the conductors in road and yard service are forwarded eventually to this office.

Each employee is given a payroll number and the payrolls are computed entirely at that point and the checks are distributed from that office.

When any controversy arises as to shortages in pay these controversies are submitted to Mr. Taylor at the Detroit office for proper adjustment.

Q. Mr. Swan, on the question of the seniority roster, can you tell us anything about that?

A. Seniority rosters are established on different divisions and in different yard localities throughout the New [fol. 132] York Central Railroad, for the purpose of defining the working seniority of the men in those particular districts, and as formerly described here, I would say that there may be more than 100 seniority rosters located at various points throughout the New York Central Railroad.

Q. In other words, these overlap, is that right?

A. There are separate seniority rosters for each district. In other words, seniority rosters are established in yards at points where men make their homes, like Chicago, Elkhart, Toledo, and other points, and the men only hold individual seniority in those respective yards.

Q. How has the jurisdiction of the Superintendent at Toledo been extended?

A. The jurisdiction of the Superintendent of the railroad at Toledo has been extended to include the entire Toledo terminal, which comprises that portion known as the Michigan Central, the New York Central Lines West, and the Ohio Central Lines.

Q. Is it a fact, Mr. Swan, that you were hired originally on the I. I. I., and your road was absorbed by the New York Central?

A. The line on which I worked was originally known as the Indiana, Illinois & Iowa Railroad. This was later the Chicago, Indiana & Southern Railroad, and then finally was termed the Illinois Division of the New York Central Lines West.

I believe that the I. I. I. Railroad was purchased by the old Lake Shore, Michigan & Southern some time in the late 90's, and later a line was built, a cross line, between Chicago

and Danville, Illinois, and this new portion and the former I. I. I. Railroad was then captioned Chicago, Indiana & Southern Railroad.

Later this was merged and became an integral part of the New York Central Railroad.

Q. So that in the basic historic development and merger you find yourself an employee of the New York Central Railroad Company. Is that right?

A. That is correct.

Q. Did they have a separate schedule?

A. Yes, they did. They had the original schedule on the I. I. I. Railroad, and then this was followed by a sched-
[fol. 133] ule of the Chicago, Indiana & Southern Railroad, and then later they were placed under the schedule of the New York Central Lines West.

Q. Generally speaking, Mr. Swan, are there any other changes you know of?

A. You mean with respect to this particular line?

Q. With respect to the extension of jurisdiction of a part of the unit.

A. The operating records will disclose, and records of the supervision of the office of the railroad have been greatly expanded within the past several years.

Take the Chicago Division, the Chicago Switching District. We find there that originally the Superintendent of the Western Division had jurisdiction over that Division, and as previously mentioned here, he also had jurisdiction when they secured the Chicago, Indiana & Southern. That was afterwards called the Illinois Division. He had those three lines, and the Chicago Terminal of the New York Central Lines West.

Later this jurisdiction was extended to include the Western Division of the Michigan Central Railroad between Chicago and Niles, the Michigan Central yards at Chicago, Illinois, and the Big Four yard at Danville, Illinois.

The train dispatching which formerly covered the Western Division and the old Chicago, Indiana & Southern Railroad has also been extended to include the Western Division of the Michigan Central Railroad.

In all cases grievances that originate in this territory are handled with the New York Central Wage Bureau at Chicago.

Q. What can you say to the Board about the jurisdiction of the Chief Surgeon in the territories?

A. The Chief Surgeon, whom we must term the Medical Director of the New York Central Railroad, is Dr. G. P. Myers, and he is located at Detroit, Michigan.

Q. What actual territory or what men does he look after and take care of?

A. It is my understanding that his jurisdiction includes New York Central Lines West, the Michigan Central, New [fol. 134] York Central Lines East, the Ohio Central Lines and Big Four. I can't speak definitely for the Boston & Albany.

Q. Has that existed always, or has that been an evolution or a change toward a single, unified operating management?

A. That has been an evolution that has tended toward unified management, and I might say that this began to start about the year 1930.

I can't state a definite date when Dr. Myers or his predecessor was given exclusive jurisdiction over the medical end of the entire New York Central Railroad.

Q. With whom do you handle grievances arising under your New York Central Railroad schedule West?

A. On the Lines West I handle the New York Central cases with the New York Central Wage Bureau that is located at Chicago, and with the New York Central Wage Bureau located at Cleveland, Ohio.

Q. In other words you telescope or overlap on these lessee lines?

A. In addition I am required to handle cases at Indianapolis, Indiana, with the Big Four; at Cincinnati, Ohio, with the Big Four Wage Bureau; at Syracuse, New York, with the Lines East Wage Bureau, and this comprises a total of five Wage Bureaus.

Q. With whom are passenger fare reports of the New York Central West conducted?

A. Made to J. J. Russell, Auditor of Passenger Accounts, who is located at Detroit, Michigan.

Q. And how about wheel reports?

A. Wheel reports are handled by Mr. E. S. Jackson, Superintendent of Car Service, at Buffalo, New York.

Q. Do you know of any of the developments looking toward a merger of supervision in Cleveland?

A. In Cleveland, Ohio, we have the entire Cleveland Terminal, which comprises the original New York Central yards and the Big Four yard under the jurisdiction of the Superintendent, and all cases that occur in this territory, whether they originate on the New York Central or [fol. 135] on the former Big Four territory, are handled with the Cleveland Wage Bureau.

Q. How about Elkhart, Indiana?

A. At Elkhardt, Indiana, we have been confronted with a consolidation there whereby the New York Central Lines West I believe in 1931 assumed jurisdiction over the Big Four yards, and grievances in that particular territory are handled with New York Central Wage Bureau at Cleveland, Ohio.

Q. Mr. Swan, is there anything else you care to state to the Board along this line of an evolution or merger of management?

A. Well, I should say that reviewing the history of the railroad operations since 1930, and the gradual expanding of the operating supervision, whereby the New York Central, Michigan Central and Big Four and Ohio Central Lines —that the work has been intermingled and the supervisory capacity of the officials has been so extended that it would be a rather difficult matter for anyone to draw a line of demarcation and say this is Michigan Central and this is Big Four or this is New York Central Lines West.

In other words, in my opinion all these different districts that may be referred to as the Big Four and Michigan Central and New York Central West or the Ohio Central Lines are now comprised of nothing more nor less than divisions of the New York Central Railroad Company.

Q. Of course a corporation is an artificial thing, and it can only act through agents.

Have you had any occasions in your experience where the man in any given territory has been vested with certain authority as an agent, which required going further or going to the executive management to straighten it out?

A. Generally we handled our cases up to and including the Wage Bureau, or the Vice President located at that point, particularly with reference to cases that are submit-

ted to the National Railroad Adjustment Board, and in other instances we have handled cases up as far as the Vice President of the Personnel, Mr. John W. Walber.

[fol. 136] Q. In other words, you keep going on until you get the last word on it? Is that the way you do it?

A. We do that in all cases, I would say, but in some where it is a foregone conclusion that nothing could be gained by further negotiation, and if both sides want to go to the Board, it would be an additional waste of time to carry the case to Mr. Walber.

It is my understanding, based on the negotiations with the officers in all the different Wage Bureaus, that after all Mr. Walber is the determining factor as to the merits of the case, from their side.

In other words, many times I have had occasion to have cases that were headed for the National Railroad Adjustment Board, or other boards, and sometimes the delay in bringing those to a conclusion would be brought about by the fact they were being reviewed by Mr. Walber in New York City, and I will say this, that whenever I have had occasion to go higher and have written him, as I did recently or a year or so ago on one particular case, because I felt he had the jurisdiction to change the conditions in that case, that he responded to my communication.

Q. Is there anything else you want to say to the Board on this line, Mr. Swan, that I haven't asked you?

A. No. I think you have covered all the angles on the New York Central Railroad.

I might add this, that the reason we had to present our cases in Syracuse, New York, to the Lines East, is because of the Erie Division of the New York Central Railroad Lines West. The Lines West have no contract covering the Buffalo yard territory, and also the Buffalo yard territory from Bay View is under the supervision of the Lines East officials, and any grievances that originate in that territory have to be handled with the Lines East officials, and the Lines East Wage Bureau at Syracuse, New York.

* * * * * * *

[fol. 137] Cross Examination.

By Mr. Mulholland:

Q. Mr. Swan, what did you say your position was?

A. Presently Chairman of the General Grievance Committee of the Brotherhood of Railroad Trainmen on the New York Central Lines West.

Q. That is an elective position?

A. Yes.

Q. You are elected by the employes in your craft?

A. Yes.

Q. Then all this organization that has been set up over there by your Brotherhood has all been by the free action of the employes?

A. That is right.

Q. And all of the conditions of employment, out of which your duties arise, have been the voluntary action of the employees in freely contracting with the employer?

A. That is correct.

Q. And that so far as you know is true of all the labor organizations meeting with the New York Central Railroad?

A. Yes.

Q. That whatever the set-up, it has been the voluntary action and free will movement on the part of the employes?

A. Yes, sir.

Q. You referred to seniority districts. Those districts are all established by a voluntary agreement between your organization and the carrier?

A. That is correct.

Q. And that can be changed from time to time?

A. Well, that could be extended, if that is what you mean.

Q. I think you explained that the reason you had to go over to Syracuse was because of Buffalo being in the East territory.

A. That is right.

Q. When you say, to use your language, that you are compelled to handle cases before five wage bureaus, where are those bureaus located?

A. They are located at Chicago, at Cleveland, at Cincinnati, Ohio, Detroit, Michigan, and Syracuse, New York.

Q. You have to make contacts with these various bureaus, because the grievances, or whatever you might be

[fol. 138] handling, arise in territory that comes under those particular bureaus, isn't it?

A. That is right.

Q. So that, after all, is merely a matter of carrying out your voluntary agreement with the carrier?

A. We have to handle those cases there because the supervisory capacity of the railroad officials has been extended over that particular craft.

In many instances our employes built all their seniority in that territory. I say that with reference to the Michigan Central, and that is an entirely operating condition that is brought about by the management and not through our organization.

In other words, we have the Detroit branch of the New York Central Lines, the Kalamazoo Division, which used to be the former Grand Rapids Division of the New York Central Lines West, the Ypsilanti & Lansing branches that have been taken over, lock, stock and barrel for operations by the Michigan Central Railroad.

We have to go to those various Wage Bureaus, not because we want to but because the condition has been forced on us by the railroad management.

Q. You go to the Bureau that has particular jurisdiction over the territory wherein the grievance arose?

A. That is right.

* * * * * * *

C. E. Robinson was called as a witness on behalf of the Brotherhood of Railroad Trainmen and, being duly sworn, testified as follows:

Direct examination.

By Mr. Bayly:

Q. Will you state your name?

A. C. E. Robinson.

Q. State briefly for the record where you live.

A. I live at Jackson, Michigan, and at the present time I am General Chairman of the Brotherhood of Railroad Trainmen.

Q. Are you an employe of the New York Central Railroad Company?

A. Yes, sir, since October 28, 1905.

[fol. 139] Q. And you have your standing as temporarily furloughed?

A. My standing as a furloughed conductor.

Q. Mr. Robinson, one thing we want here is any facts——

Mr. Beyer: What territory?

The Witness: What was known as the Michigan Central.

* * * * * * *

Q. Mr. Robinson, for this record and the information of the Board, what do you know about the existence of a bona fide dispute between the employes of the New York Central Railroad Company in this special or particular craft or class unit known as the yardmen, which is before the Board? Do you understand the question?

A. Yes, sir. There has been more or less of a dispute since probably January 1, 1940, because in April, 1940, I received a petition addressed to me from the yardmen who work in the old northbound yard at Toledo, which was operated by Michigan Central officials at one time.

This petition asked me to represent them in their troubles, and was signed by 38 men off of a roster that contains 56 men; four of these men, of course, are yardmasters but have not signed this petition.

Q. That petition to which you are referring is in writing?

A. Yes, sir, and that is it. It came through the mail.

Mr. Bayly: We offer that as B. of R. T.'s Exhibit 8.

(The petition referred is thereupon received in evidence and marked "B. of R. T.'s Exhibit 8.")

By Mr. Bayly:

Q. I hand you this petition and ask you to read that, starting with the date of it, just the caption.

A. "Toledo, Ohio, April 10, 1940. Mr. C. E. Robinson, 725 Edgewood, Jackson, Mich. Dear Sir & Brother: We the undersigned Michigan Central Yardmen at Toledo, Ohio, account of being denied the right of having a Local Committee for the purpose of protecting our interests by the S. U. of N. A., respectfully request that you represent us, in protecting our seniority rights, rights to work, and [fol. 140] other matters affecting our welfare and interests," signed by 38 men whom I have checked against a roster and find that those men are employes.

Q. What proportion of that 38 is that to the whole number within that particular unit there?

A. There are 56 men on the roster at Toledo. 4 are yardmasters; 38 yard conductors and switchmen signed this.

Q. Mr. Robinson, I interrupted you when you were about to give some further testimony.

A. I was going to state that this petition came unsolicited, because I was off nine weeks sick; I went to the hospital January 16 and didn't return, as you might say, to my normal work until around April 1st. I did some work at home and that was all, just what I could handle with a stenographer, but I wasn't in Toledo to get this.

Q. It may be repetition, but this then is a dispute emanating from the employes within this unit and not a dispute between unions. Is that right?

A. It is employes.

Q. Are there any other facts regarding the existence of a dispute of which you have personal knowledge?

A. If anyone had been around Detroit in the last six weeks, there is considerable dispute there.

In Detroit there are 608 switchmen on the seniority roster, 53 being yardmasters, and I found upon returning from New York to Detroit the morning of February 2 that the employes there are very much in arms and figured they couldn't get anything out of the particular standard brotherhoods.

A close check that week revealed 700 employes in train yard service, engine service, and among the carmen, had filed a petition to the C. I. O. for representation.

This is something our organization has checked. I assume that the Switchmen's Union has checked it, because a week ago Tuesday their Vice President reported to the chief operating officer of the railroad on this subject and called him out of a meeting with me, and the officer related some of the conversation.

[fol. 141] It is something that is not very pleasant in that industrial center.

Q. Mr. Robinson, is it fair to say to this Board that there is a bona fide dispute, an incipient unrest, revolt, or something of that kind in that territory?

A. Yes, sir.

* * * * * * *

By Mr. Bayly:

Q. Mr. Robinson, what if anything do you know about any merger of yardmen's rosters of the Michigan Central and the New York Central Railroad Company West at Toledo?

A. You could call it a merger or one list set behind the other.

Q. I don't know what you mean by one list set behind the other. What is that?

A. So that after a given date the new man hired would have seniority on both New York Central and the so-called Michigan Central property.

Q. What I am interested in particularly is whether or not this has anything to do with extending the scope or operation within which these men could work?

A. Yes, it extends it to a certain extent.

In other words, if the old New York Central territory runs out of men that permits these men in the Michigan territory to work over there in preference to hiring a new man, or vice versa. Then when the new employe comes he has rights in both territories.

Q. In other words, is this a fair assumption from your standpoint, that this is a tendency toward unified placement of the men through a more centralized management? Is that right?

A. That is it. The roster at Detroit, somewhere around 1932, was merged. The so-called N. Y. C. men who were there were cut into the Detroit roster on the basis of seniority though there was only one there. The same was done at Jackson, Michigan, and the same was done at Lansing.

Q. Now, Mr. Robinson, you spoke of two units of this property within your territory having been merged at Jackson and at Detroit. This was a merger of two units of em-
[fol. 142] ployes, but each separate unit was doing the same kind of work or within the same class?

A. That is right.

Q. Who supervised this unified operation?

A. From the managerial standpoint?

Q. Right.

A. Operating officers at Detroit only.

Q. And who are they?

A. Michigan Central, Chief Operating Officer Mr. McKee.

Q. Who initiated this merger?

A. Well, I don't know as I could answer that and be exactly correct on it.

I assume that it was handled through the representatives of the Switchmen's Union of North America.

Q. Is this true or not, that before this merger there were officers at Jackson and Detroit which supervised the earlier units before put together, some N. Y. C. men as well as local men?

A. Well, the N. Y. C. men that were at Detroit in yard service I think were supervised by an officer at Toledo on the N. Y. C. Railroad.

Those at Jackson were supervised by a group of company officials at Hillsdale when that was known as the Lansing Division of the New York Central several years ago.

Q. Mr. Robinson, in handling schedule matters what experience have you had and with whom have you dealt ultimately in settling the dispute? Take, for example, your extra passenger list at Detroit.

A. Well, twelve years ago today I took the position I have at the present time. Of course our Committee handed me a pretty big job.

One of the things was the establishing of an extra fare trainmen's list between Detroit and Chicago.

This went into the mill and I didn't make very much progress with our Chief Operating Officer at Detroit, which necessitated the calling of a Vice President of our Brotherhood, and he and I finally concluded negotiations on this extra passenger list September 1, 1931, with the assistance of Mr. John G. Walber, Vice President Personnel, New York Central, Mr. Walber coming to Detroit to handle this case, and the settlement now is part of our working agreement known as Article 4 (A)(b).

[fol. 143] Q. Is there any other case, Mr. Robinson, in which Mr. Walber took jurisdiction in settling a matter that you had up with him?

A. We had a joint dispute, I believe, a little prior to that time between the conductors and the trainmen where two Vice Presidents of the Brotherhoods, former Vice President Montooth for the Conductors and former Vice President McKirchy for the Trainmen went to New York and conferred with Mr. Walber's office.

Q. Is there any other instance, while we are on this part of it, that might help the Board, where you took it up with an officer of the Central management or Mr. Walber?

A. Yes. We had a dispute that started in 1932 where the management extended a terminal from Montrose, Ontario, to Suspension Bridge, New York, a distance of six miles.

In attempting to get a proper equity for yardmen who were displaced it became necessary that our Committee, with the assistance of Vice President Reed, meet with Mr. Walber and the subordinate officers in New York City.

Q. Mr. Robinson, you have testified about the number of men within this unit who have requested you, of the B. of R. T., to represent them, of the total number employed within this territorial and appropriate unit, in addition to the ones who have designated or expressed a willingness for you to represent them, of the remaining men I am talking about. I suppose there are some of those that may or may not be members of any unit. Is that true?

A. I would say in the city of Detroit there are more that are not members of any union than there is otherwise.

Q. Then of the total number you would deduct the number who have expressed their willingness to have you represent them, plus the ones not in any union, and that residue would be represented by some other union or so-called minority. Is that right?

A. Yes.

Q. On the questions of payroll, do you know how they headed their pay checks?

A. Pay checks used with Michigan Central employes are captioned "New York Central Railroad Company." The lower center of the check has the New York Central System [fol. 144] and Mr. J. B. Taylor's name appears in the righthand lower corner. He is Departmental Accountant.

Q. I hand you train order form 31, and ask you to identify that.

A. That is the form of train order that is being used at Jackson, Michigan.

Q. Just give us the caption of that.

A. "New York Central Railroad Company". This is quite an old form.

Q. Are they using that now?

A. You would have this change in here, "New York Central System" instead of "Lines". In other words, they are using up their old stationery.

Mr. Bayly: If the Board please, we will not put that in because I don't think it will help the Board any. It may be a little confusing, and I don't think it will help any.

The Chairman: All right.

By Mr. Bayly:

Q. I hand you this notice and ask you to identify that.

A. That is the standard notice used by the New York Central Railroad Company.

Q. That is in use today?

A. Yes. Then they have another form too.

Mr. Bayly: We offer that in evidence as B. of R. T.'s Exhibit 9.

(The standard notice referred to is received in evidence and marked "B. of R. T.'s Exhibit 9.")

Mr. Bayly: That is all we want to ask Mr. Robinson.

* * * * * * *

Mr. Beyer: I know it does, but I wanted to get the picture clear.

Do you have any jurisdiction in Canada?

The Witness: I have jurisdiction over the road trainmen, yardmen and switchtenders.

Mr. Beyer: Whether in Canada or in the United States?

[fol. 145] The Witness: Yes, sir. There is a separate agreement for the yardmen in Canada and the road schedule I have extends right through Canada to Buffalo.

By Mr. Mullholland:

Q. In other words, you represent the trainmen on the entire Michigan Central Lines?

A. Right.

Q. But you represent the switchmen only east of the Detroit River?

A. That is right.

* * * * * * *

Q. Calling your attention now to the merger you spoke of in Detroit and Jackson, just tell us what that was.

A. At Detroit there used to be a Michigan Central roster of yardmen and a small roster of New York Central yardmen, and I think they dovetailed it on the seniority basis.

Q. That was again the unification or consolidation of the yard operations?

A. Yes.

* * * * * * *

C. E. KEELER was called as a witness on behalf of the Brotherhood of Railroad Trainmen and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Bayly:

Q. Will you state your name and residence?

A. C. E. Keeler. I reside at Toledo, Ohio, and I hired out on the Toledo & Ohio Central Railroad.

Mr. Mulholland: We will admit the qualifications of all these witnesses. We don't want to encumber the record with it.

By Mr. Bayly:

Q. Go ahead.

A. February 1, 1913, and at the present time I am General Chairman, furloughed conductor.

[fol. 146] Q. That is for the purpose of doing the job you are now doing?

A. With the Brotherhood of Railroad Trainmen, representing the men on the New York Central Railroad Company, Ohio Central Lines.

Q. For the purpose of the record will you state more specifically your territorial unit that you work under? I want the Board to know the area you are in, what comprises your territory as General Chairman.

A. My territory was formerly the Toledo & Ohio Central Railroad, Zanesville & Western Railroad, Kanawha & Michigan Railroad, which comprises now the New York Central Railroad Company, Ohio Central Lines.

Q. There has been a unification in the operation. Is that right?

A. Yes.

Q. Explain that to the Board.

A. At Toledo we have a Superintendent that covers the Ohio Central Lines, Stanley Yard, M. C. territory, and por-

tion of the New York Central Lines West, and we have a Superintendent at Columbus, Ohio, and an Assistant Superintendent at Charleston, West Virginia, and I handle matters pertaining to the territory with the Assistant Vice President and General Manager of the office at Cleveland, and a portion which is known as the St. Mary's Branch is under the jurisdiction of the operating officer, Vice President and General Manager, at Cincinnati, Ohio.

Q. What road?

A. Big Four, and the Assistant General Manager of the Big Four at Indianapolis, Indiana.

Q. Was this operating arrangement always so?

A. No.

Q. Under whose jurisdiction is it now, this unified operation?

A. New York Central Railroad Company.

Q. Tell us with whom you handle schedule matters arising there in the various portions or subterritorial sections under your jurisdiction.

A. I handle schedule matters with the superintendent at Toledo for that territory, and if I fail there then I carry them to Cleveland to the Assistant Vice President and General Manager and the Wage Bureau.

[fol. 147] Q. This man you are talking about going to, has he jurisdiction over any other territorial units within the New York Central Railroad Company?

A. Yes, the Line West.

Q. Explain that a little more fully.

A. As I understand, he is the Assistant Vice President and General Manager of the New York Central Railroad Company's Line West.

Q. You mean west of Buffalo?

A. Yes, west of Buffalo.

Q. Is there anything else you want to say to the Board further on that?

A. I will state prior to my explanations as to the operating officers we had a General Manager at Columbus, Ohio, and this change was made about 1932, and changed to Cleveland, Ohio.

Q. Referring to the St. Mary's Branch, was that always under the jurisdiction of the Big Four?

A. No.

Q. Tell us about that.

A. They turned the operating for the St. Mary's Branch over to the officials of the Big Four I would say about 1934 or 1935—not to be exact, but somewhere around there—and this is a part of our western subdivision and they come under the same schedule that the men do on the western subdivision, which the St. Mary's Branch is a part of the western subdivision.

Q. What is the number of yardmen represented by your schedule?

A. At the present time there are approximately 360, but there are 400 on the seniority roster. Several are not working.

Q. For purposes of this Act, for representation, you (and by "you" I mean a representative of the B. of R. T.) represent all these men within this so-called appropriate unit. Is that right?

A. Yes.

* * * * * * *

Mr. Beyer: May I ask, just for my information at this point, are there any yards in your territory, the employes of whom, the yardmen of whom, are represented now and covered by an agreement between the Switchmen's Union and the carrier?

[fol. 148] The Witness: No.

Mr. Beyer: None?

The Witness: No.

Mr. Beyer: The Brotherhood of Railroad Trainmen represent all the yardmen on your particular territory?

The Witness: Yes.

By Mr. Mulholland:

Q. So far as you know there is no desire on the part of anyone to change that situation? Is that true?

Mr. Bayly: Do you understand the question?

By Mr. Hulholland:

Q. Your representation is perfectly satisfactory to all those men?

Mr. Bayly: Do you understand that?

The Witness: Yes, I understand it.

Mr. Bayly: Answer it then as best as you can.

A. Yes.

By Mr. Mulholland:

Q. In other words there is no dispute in your territory, is there?

A. No.

* * * * * * * *

C. E. UMBANHOWAR was called as a witness on behalf of the Brotherhood of Railroad Trainmen, being first duly sworn, testified as follows:

Direct examination.

By Mr. Baily:

Q. State your name and residence.

A. C. E. Umbanhowar; Indianapolis, Ind.

Q. What has been your status heretofore? Have you been employed by the New York Central Railroad Company?

A. I hired the Big Four Railroad January 9, 1913.

I went on the General Committee in September, 1913, and succeeded to the office of General Chairman March 1, 1922.

[fol. 149] Q. And you are furlong-ed for this particular work you are now doing?

A. I was issued an indefinite leave of absence on March 1, 1922, for the purpose of serving as General Chairman.

* * * * * * * *

A. At the time I became General Chairman on the Big Four there was a General Chairman for the trainmen on the Evansville, Indianapolis & Terre Haute Railroad; a General Chairman on the Cincinnati Northern Railroad, and on the Louisville & Jeffersonville Bridge Company.

In 1923 we gave the Big Four General Committee jurisdiction over the E. I. & T. H. and the Cincinnati Northern, and through negotiations applied the Big Four rules to those two properties.

About 1928—this date may not be exact, but the story is right—the Big Four took over the operations completely of the E. I. & T. H. and the Cincinnati Northern.

In 1930 the New York Central took over operation of the Big Four.

Q. That is West?

A. New York Central Railroad.

Q. All right.

A. I had approximately 75 or 80 yardmen employed in the Lindale yard at Cleveland.

For operating purposes the New York Central Railroad changed the operating officials from the Big Four to the New York Central.

Q. That is you mean transferred it back again?

A. No, not back.

Q. All right. Go ahead.

A. Transferred it to the New York Central, and they then became under officials of the New York Central Railroad.

About 1931 they took over the operation of yard service at Sandusky, Ohio.

Q. Who did?

A. The New York Central Railroad, and the Big Four lost the jurisdiction of yard service at Sandusky, Ohio.

[fol. 150] In the same year they took over the jurisdiction of Big Four operation at Elkhart, Indiana, and the Big Four lost its jurisdiction.

In 1931 the Illinois Division (what Mr. Swan told you was originally the I. I. I. Railroad) was under the jurisdiction of the New York Central Lines West, and this operation was changed over to the jurisdiction of the Big Four officials.

Q. That is where the transfer back took place?

A. No.

Q. All right. Go ahead.

A. This operation remained in effect until about 1936 when the New York Central Lines West took over the operation of the Danville Division, and in addition to that the Big Four yard at Danville, Illinois.

There is now a bulletin placed notifying the Danville, Illinois, yardmen that the jurisdiction of operation will be changed from New York Central Railroad to the Big Four effective March 1, 1941.

Q. Is it a fact or is it not that you are claiming that this shows a unification in the operating management on behalf of the New York Central Railroad Company, which we claim is the carrier?

A. I don't think there can be any question especially in a man's mind who represents the men and deals with the management of the New York Central Railroad and the Big Four but what it is the New York Central Railroad.

They change operations from one yard to another for the purpose of consolidating their operations and in the handling of grievances. I might relate something that occurred that indicates to me more than ever the New York Central Railroad is the one that is the operating company.

In 1935 the Vice President and General Manager of the Big Four agreed with me to spend $125,000 in putting seats on engines for the head brakeman to ride on.

This was agreed to in January, and about two weeks later he wrote me a letter and told me he couldn't agree to it, and then he advised me that the New York office of the [fol. 151] New York Central Railroad wouldn't approve the appropriation to put them on.

Then later on, handling the question with the assistance of a Grand Lodge officer, it was necessary for them to wait until they got approval from the New York office before we could arrive at any agreement, and during the time, especially since 1935, all of our engine numbers had been changed to correspond with the New York Central Railroad numbers; all of our box cars and equipment, even including lines supply cars that stay on the lines, the numbers have been changed to correspond with New York Central equipment.

In December there were 11 engines of the L-2 type sent from the New York Central to the Big Four, and they were sent there, I was informed, for the purpose of handling freight service while they were using the Big Four L-2 engines in passenger service.

They have been there three months, and the officials of the Big Four advised me that it doesn't matter where an engine came from just so it is a New York Central; that Big Four and New York Central is no different; that they are the same railroad, and they are paid out of the same kettle, and all the earnings from the Big Four goes into one big pot to be paid out for expenses, etc.

Q. Briefly summing up in substance what you have said, what do you claim for this?

A. I would claim that the Big Four is just as much New York Central Railroad as either one of what is termed Lines East or West.

Q. And that the executive management of the operating carrier, New York Central Railroad Company, is the source of the ultimate management of this system. Is that right?

A. There is no question about that. Every move the Big Four makes they have to get the approval of the New York Central.

Mr. Lewis: May I ask this question? There would be equipment say of these Big Four roads, as former independents, and there would be equipment of the New York Central, freight cars. I think in the old days they used to charge a dollar a day when a car was transferred.

[fol. 152] The Witness: Per diem. There is no such thing. There is no such thing as a per diem as between the Big Four and the New York Central.

Mr. Beyer: Are there any yards under your general jurisdiction, the employes of which are represented now by the Switchmen's Union of North America?

The Witness: No.

Mr. Beyer: All are being represented by the Brotherhood of Railroad Trainmen?

The Witness: That is right.

Mr. Beyer: And your territory, broadly speaking, coincides with what used to be known as the Big Four?

The Witness: That is right; the Big Four, the Evansville, Indianapolis & Terre Haute, and the Cincinnati Northern, but they entirely lost their identity the same as the Big Four lost their identity now.

Mr. Bayly: That is all.

Cross-examination.

By Mr. Mulholland:

Q. All the men are perfectly satisfied with that arrangement, aren't they?

A. Yes, sir.

Q. In other words, so far as the Big Four is concerned there is no dispute there at all?

A. No, sir.

* * * * * * * *

Re-direct examination.

By Mr. Bayly:

Q. As I understand it this question as to whether they pay a toll— I don't know what you call it——

A. (interposing) Per diem.

Q. —is only important as showing whether or not a car of the New York Central Railroad Company when it is on the Big Four, if it does not pay, it therefore indicates it is a part of the System. Is that right?

A. That is right.

[fol. 153] Q. If you get a car from outside, a foreign car, then you pay a toll?

A. That is right.

Mr. Bayly: That is all.

(Witness excused.)

W. P. Kennedy was called as a witness on behalf of the Brotherhood of Railroad Trainmen, being first duly sworn, testified as follows:

Direct examination.

By Mr. Bayly:

Q. Will you state your name?

A. W. P. Kennedy.

Q. You are Vice President of the B. of R. T.?

A. Yes, sir.

Q. And you are here in such capacity and as a representative of the President?

A. That is correct.

Q. For purposes of keeping this record straight, give the Board briefly your connection with this case, and the attempt heretofore to settle the issues which later resulted in bringing it before the Board?

A. On January 21, 1941, I received a telegram from President Whitney of the B. of R. T., while in Minneapolis, Minnesota, to proceed at once to New York City where I would meet Mediator Pat Harvey, of the National Mediation Board, who had been assigned by the Board to make an investigation in the Board's case R-690.

Upon arrival in New York I conferred with Mr. Harvey, and we had over a period of several days a number of interviews involving and surrounding this dispute, and those interviews continued until February 1, 1941, when Mr. Harvey wrote me and advised:

"Refer case our file R-690. Please be advised that in view of unwillingness of parties to agree upon who may participate in designation of representatives for employes involved Board has no alternative except to recess investigation and to hold hearing on issue raised upon request of applicant organization. Investigation is therefore recessed today."

[fol. 154] While in New York meeting with Mediator Harvey one of the questions that arose was with regard to the total number of employes that would be involved in this dispute, and as such Mr. Harvey interviewed the executive officers of the New York Central Railroad, and as I recall it was at Mr. Walber's office, for the purpose of ascertaining the number of employes who would be involved, and later I was advised by Mr. Harvey that the New York Central Railroad had furnished Mr. Harvey with these figures.

I might state further that the figures that I will give were the figures that were reported to the Interstate Commerce Commission as of November 15, 1940, by the New York Central Railroad Company; subdivided as follows:

Lines East, 2,281. Lines West and Ohio Central, 1,607. Michigan Central, 1,072, Big Four, 888. Boston & Albany, 239. Or a total of 6,087.

Mr. Lewis: That includes what kind of workers?

The Witness: That includes men employed exclusively in yard service, to wit, yard conductors, yard brakemen and switchtenders.

After these figures I received from the New York Central Railroad Company, Mediator Harvey and I sat down and jointly reviewed our records with regard to the number of personal authorizations for representation slips that had been signed which were forwarded to the Board at the time the invocation was presented by the Brotherhood.

These authorizations for representation slips were signed by men employed in yard service as yard conductors, yard brakemen and switchtenders on the various units of the New York Central Railroad, subdivided in the following manner:

Lines East, 2,129. Lines West, 774. Ohio Central Lines, [fol. 155] 374. Michigan Central, 479. Big Four 779. Boston & Albany, 214. Or a total of 4,749.

Mr. Lewis: There is no segregation in those figures of the switchmen alone; the number of the switchmen.

The Witness: They are all switchmen and switchtenders.

By Mr. Bayly:

Q. Mr. Kennedy, this was information that you got from the office of the New York Central Railroad Company. Is that right?

A. This is information that came directly from their headquarters that I received through Mediator Harvey.

Q. What I would like to have you tell the Board is what is the total number of employes of the New York Central Railroad Company within this unit we are talking about.

A. The total number of employes engaged in yard service within the several units that we are now discussing is 6,087.

Q. That number includes every man within this particular unit?

A. That number includes every man employed in yard service as yard conductor, yard brakeman and switchtender that was employed on these various units as of November 15, 1940.

Q. In other words, that is the total number employed by the carrier?

A. Yes.

The Chairman: Car retarder operators I think were mentioned in the beginning of the application.

Are car retarder operators reported under the designation of foremen or helpers, or are they reported separately?

The Witness: I think the railroad reports car retarder operators to the Interstate Commerce Commission in the capacity of yard conductors.

[fol. 156] By Mr. Bayly:

Q. Of this number what percentage is represented by the B. of R. T.?

A. Of this number the percentage of the B. of R. T., while I haven't figured it out, would be I presume approximately 74 per cent.

Q. Of this remaining percent some of these workmen may not belong to any organization. Is that true?

A. That is correct.

Q. The remaining men of this group may or may not be represented by other organizations or representatives. Is that right?

A. That is possible.

Mr. Beyer: May I ask a question there? Just to keep the record straight and continuous, I want to ask a question or two here.

As I understand Mr. Kennedy has testified that the number of people known as yardmen is 6,087, and that figure is the figure provided by the Railroad Company, and it represents the so-called middle of the month count, the middle of the month being November 15, 1940. You understand that is the figure?

The Witness: That is correct.

Mr. Beyer: But that there are employes, in addition to those who may have happened to be working at that particular day, who conceivably may be in this picture, namely, people who were sick on that day, people who were furloughed on that day, people who were on leave of absence on that day. How many more of those are in that picture?

The Witness: The agreement between the railroads and the Interstate Commerce Commission provides for the number of employes working on a given date.

Naturally those figures do not represent the total number of employes who would be employed, so I would probably say that in addition to those figures, as given to the I. C. C. by the railroad, there probably would be several hundred more that hold seniority as yardmen but who on that particular day didn't happen to get on the payroll because of sickness or otherwise.

[fol. 157] By Mr. Bayly:

Q. What evidence or proof have you for the Board of representation of the majority of these men within this unit we are talking about?

A. When we presented the personal authorization slips, signed by the individuals, we contended to the Board that those personal signed authorization slips represented a majority of the yardmen employed on the New York Central Railroad. They have heretofore been presented to this Board. They were presented to the Board on the day of our letter requesting the Board to take jurisdiction.

Q. And that confirms the statement you have made that the B. of R. T. was the chosen representative of substantially 74 per cent?

A. Yes.

Mr. Bayly: You may cross examine.

The Chairman: I would like to ask one question. Did I understand your answer to that question to representation to be based on the number of authorizations or was the answer based on the number of employes that you now represent as covered by agreement to the total number of employes?

The Witness: My answer would be that these personal authorization slips that are signed by individuals employed in yard service from the various units of the New York Central Railroad represent a majority of the employes that are now employed in that service, as reported to the I. C. C. by the Railroad would still be a majority, taking into consideration several hundred more who were not reported at the time the figures were given to the I. C. C., on November 15, 1940.

In other words the personal authorization slips that we have now presented to the Board represent a majority of the total number of employes that would be involved in this controversy from the six units of the New York Central Railroad Company.

The Chairman: Thank you.

. . . . . .

[fol. 158] By Mr. Mulholland:

Q. In that respect I expect we would all agree that regardless of what units or unit is allowed to participate in an election, the men whose names appear on the seniority list have a right to vote in such an election.

A. Yes, generally speaking, that is true.

Q. That is if they are legitimately there.

A. Generally speaking, that is true.

Q. So that your middle of the month count may, as you say, have left off several hundred men who would be entitled to vote in an election, regardless of the unit?

A. I think that is correct.

Q. It is my understanding that the B. of R. T. represents all the employes in the yard service on the Lines East?

A. That is correct.

Q. And no one is questioning your right to represent those men?

A. That is also correct.

Q. That same thing is true of the Ohio Central?

A. Yes.

Q. And of the Big Four?

A. Yes.

Q. And of the Boston & Albany?

A. Yes.

Q. The only question here, if we admit your contention, what you would ordinarily call an active dispute, would be on the Lines West and the Michigan Central?

A. There are joint contracts on the Lines West, and the Switchmen's Union organization have it on the Michigan Central.

Q. In other words, there may be conflicting interests there?

A. On that portion of the railroad, yes.

Q. My understanding of your theory is that having the representation on the Lines East, the Ohio Central, the Big Four and the B. & A., you would ask the Board to vote all of those men for the purpose of settling anything that may bother you on the Michigan Central and the Lines West?

A. In a dispute of this kind——

Q. I am not talking about the legal phase. I am coming to the practical side of it.

A. We are following, as we understand it, the application of the law as set out by the Board.

[fol. 159] Q. But the practical result is that if you can vote all these men on these other lines, where you have no dispute as to your right to represent them, you can eliminate the Switchmen's Union from these properties.

A. That would be possible.

Q. Well, that is what you are trying to do, isn't it?

A. That is quite possible. On the other hand if we lost the vote we would lose it on the entire New York Central Railroad.

Q. But you are not taking much chance in this particular case.

A. You always take a chance when you go to the polls.

* * * * * * *

Mr. Walber: If you will permit me I think I can throw a little light on this.

* * * * * * *

* * * The payrolls are kept for the lines east of Buffalo at Utica, which includes B. & A. and New York Central. For all Lines West, New York Central, Ohio Central, Michigan Central and Big Four, they are kept at Detroit, * * *

* * * * * * *

Mr. Bayly: Let the record show I would like to call Mr. Walber for purposes of cross-examination.

JOHN G. WALBER was called as a witness and, being first duly sworn, testified as follows:

Cross-examination.

By Mr. Bayly:

Q. Give your full name.

A. John G. Walber; Vice President, Personnel, New York Central System, which includes not only the New York Central Railroad and leased lines but the Pittsburgh & Lake Erie Railroad, the Indiana Harbor Belt, the C. R. & I., including Chicago Junction, and before the Rutland Railroad went broke and couldn't pay me any more, I also [fol. 160] was Vice President of the Rutland Railroad, but I am no longer.

Q. Are you a part of the executive management of the New York Central Railroad Company?

A. I hope so; I am.

Q. Your general offices are on Park Avenue?

A. No; 466 Lexington Avenue, New York.

Q. And in New York Mr. Frederick E. Williamson and other executive officials of the company are situated?

A. That is correct.

Q. Executives make decisions, and we are talking about an operating railroad executive, a carrier, and the work is divided generally into two or three main classifications. I suppose one of the first big things is the question of finance, isn't it?

A. Yes.

Q. And all questions of financial policy are decided in New York, I take it?

A. That is correct.

Q. The ultimate last word decisions on general corporate operating policies are also decided there, are they not?

A. That is correct.

Q. So that if we talk about the company, and include the leased lines, the last word from the point of view of the executive management comes out of New York, isn't that right?

A. That is correct.

Q. Mr. Walber, I just want to ask you a few little spots in connection with these leases. It may not be in your authority or within your scope of your work, I don't know. Your work has been primarily in personnel, hasn't it?

A. Labor matters.

Q. Let's take the lease between the Company and M. C. Do you know whether that lease contains a provision to renew in perpetuity or not, or whether it is just for 99 years?

A. I don't recall. I have the lease in my office, but I don't recall.

Q. In all of those leases generally there is a small minority of the old lessor companies still outstanding, isn't that true? Do you understand that question?

[fol. 161] A. I think I understand it. My understanding is that on the Michigan Central there are some of the companies which the Michigan Central absorbed, but for corporate purposes the identity must be maintained.

Q. And the lessee, which is the Company, allows an allotment of money each year to keep that corporate fiction up there. Is that right?

A. That is my understanding.

Q. And there is also a dividend paid to the stockholders of the lessor company; that would be the unit leasing to the New York Company?

A. The Michigan Central Railroad.

Q. That is right—other than the stock held by the lessee, that is the New York Central Company?

A. That is correct.

Q. Is the purpose of that to protect those minority stockholders because for reason or another they didn't see fit to sell their stock to the Company?

A. That is my understanding. They would not come in.

Q. And they had to be taken care of?

A. They had to be taken care of. We tried to get them in, but they wouldn't take the award the arbitrators had made for their stock.

Q. In case of default in case of this ground rent, I call it, lease rent, of any default so that that property would revert to the original owner, which was the lessor, it would really fall back into the hands of the stockholders, wouldn't it?

A. Correct.

Q. And in this particular case it would fall back into New York Central Railroad, wouldn't it?

A. Correct.

Q. It would fall from one pocket into another?

A. Correct.

Q. Mr. Walber, your main experience has been in handling men and their relations in connection with their jobs on these railroad companies.

Generally speaking, executives like to simplify their jobs, don't they? They like to formulate a general corporate policy and have that apply in so far as possible, and then the, make modifications to meet local conditions?

A. Correct.

[fol. 162] Q. Has that been the tendency, based on your experience, with the New York Central Railroad Company?

A. It has been one of my principal duties and efforts to bring that about.

Q. Because you have plenty of work even if you had it unified as much as possible. That is true, isn't it?

A. Correct.

* * * * * * *

Mr. Mulholland: Have you any further statement you desire to make to the Board?

The Chairman: I might say we asked Mr. Walber at some time during these proceedings to come down and make a statement. Whether he makes that statement now or whether you wish to cross-examine him——

Mr. Mulholland: I would rather have his full statement. lations I had a discussion with the Vice President of our appearing before this Board. This telegram is dated Washington, D. C., February 17, 1941, addressed to me at New York:

"Board mailed you copy of notice of hearing in re Yardmen on New York Central set for February 20th. We will appreciate your having representative of carrier attend this hearing who is thoroughly familiar with intercorporate financial relations, operating practices, and the manner in which negotiations are handled between management and employees of various portions of the System, and any other facts which may be helpful to Board in the hearing. Please advise. Signed Robert F. Cole, Secretary, National Mediation Board."

Upon receipt of that telegram I immediately conferred with our Executive Vice President at New York to see whether he had anybody else to suggest who would talk about operating practices.

He told me he thought I was sufficiently familiar with the operating practice on the System to be able to testify directly or to answer any questions that might arise and might be relevant or pertinent to this hearing.

[fol. 163] As to the first question about intercorporate financial relations I had a discussion with the Vice President of our Law Department, and he thought that the most practical thing for me to do would be to refer the Board to the record in this 150 I. C. C. report, page 278, Finance Docket 5690, which covered a complete investigation of the New York Central and all its intercorporate relations; what the plans were for reorganization of the railroad, and particularly leasing the Michigan Central and the Big Four lines, and Mr. Aronson said, "I can't possibly see how the Board of Mediation could be interested in all these details of these corporate relations, and all they will want will be the broad questions, and they are fully covered in this Finance Docket." However, he said, "If the Board should want it and they asked for it we will be glad to supply copies of the lease, which the I. C. C. approved, in connection with that Docket."

With that preliminary explanation I would like to make one further preliminary explanation, having in mind the discussion here as to the New York Central System and the New York Central Railroad.

The opening paragraph of this notice of hearing which has been sent me——

Mr. Bayly: Just a minute now. I don't want to interrupt, but do we want to confuse the System with the Company here?

The Witness: I am clearing it up still further. I want to explain my testimony, Mr. Bayly.

Mr. Bayly: All right.

The Witness: The opening paragraph of that notice reads:

"Whereas, the Brotherhood of Railroad Trainmen has invoked the services of the National Mediation Board to investigate an alleged representation dispute among the yardmen (foremen or conductors, helpers or brakemen, switchmen and car retarder operators) employed, according to the Brotherhood, by the 'New York Central Railroad Sys- [fol. 164] tem', which System, according to the Brotherhood, is composed of the New York Central Lines, East and West; the Ohio Central Lines; the Cleveland, Cincinnati, Chicago & St. Louis Railroad; the Michigan Central Railroad and the Boston & Albany Railroad."

Because of that description corresponding with what we know as the New York Central Railroad, and leased lines, that will explain the statement I have prepared.

The inter-corporate financial relations of the New York Central properties are rather fully described in Finance Docket 5690, which was reported in 150 I. C. C. Reports, Page 278, dealing with the New York Central unification. This docket is a public record and the Mediation Board may take judicial notice thereof.

The New York Central Railroad Company itself is a consolidation of many separate corporations. Prior to the lease effective February 1, 1930, of the Lines of the C. C. C. & St. L. Railway Company, commonly called the Big Four, and the Lines of the Michigan Central Railroad Company, the previous major consolidation took place in December, 1914, when the Lake Shore & Michigan Southern Railway Company and the New York Central & Hudson River Railroad Company, together with a number of smaller companies, were consolidated into the present New York Central Railroad Company. Even before the lease of February 1, 1930, the C. C. C. & St. L. Railway Company and the Michigan Central Railroad Company were under common control with the New York Central Railroad Company.

The finance docket referred to deals with the subject of corporate relations rather extensively and apparently should supply any information that is desired in the premises.

In the operation of the New York Central Railroad Company, System officers, such as Executive Vice President, Vice President in charge of Accounting, Vice President in charge of Finance, Vice President in charge of Construc-
[fol. 165] tion, Real Estate and Developments, Vice President of Purchases and Stores, deal with policies applicable to all of the properties, and coordinate activities where the use of more than one part of the system is involved.

Under the Executive Vice President, the activities of the Mechanical and Maintenance of Way Departments, respectively, are coordinated to bring about the most efficient use of the shops, etc., in the Mechanical Department and uniformity of standards, practices, etc., in the Maintenance of Way Department.

Just reading that over I think perhaps the Executive Vice President might not like the way I stated that, but I assume everyone will understand that the title "Executive Vice President" is sufficiently descriptive of the duties and responsibilities which that office would have. He ranks next to the President in authority and responsibility, so I didn't describe his duties as extensively as I should have done.

The reason I singled out the Mechanical and Maintenance of Way Departments is because we have no official in charge of each of those departments for the whole System, except Mr. Flynn of the Mechanical Department and Mr. Keever, the Chief Engineer in the Rolling Stock Department, who is in charge of designs, etc., and at this particular time we did not have the position of Engineer of Maintenance of Way. He coordinates the Maintenance of Way policies, and so on, but they report directly to the Executive Vice President.

The coordination of train service comes under a Manager of Passenger Transportation and a Manager of Freight Transportation. These officials plan and supervise the through passenger and freight service affecting all of the Lines.

They have corresponding officers on the separate properties who look after the detailed operations on the separate properties, but these are the ones who do the coordination throughout the different parts of the System.

[fol. 166] Negotiations between management and representatives of the employes come under the general supervision of the Vice President-Personnel, whose principal function is to serve in an advisory capacity to the responsible officials on the different properties.

Owing to the scope of agreements, uniformity of methods of negotiation cannot be had. Copies of all of those agreements are on file with the Mediation Board, but for ready reference in this case I shall file as an exhibit a complete list of all agreements showing occupations and territories covered thereby.

I offer in evidence Carrier's Exhibit 1.

* * * * * * *

The Witness: So far as the Operating Department is concerned, the negotiations are conducted on the several portions of the properties. The General Manager of the Boston & Albany Railroad handles the negotiations covering all employes on that property excepting those in the Dining Service Department. On the New York Central, Buffalo and East, there is a Vice President and General Manager in charge. Negotiations covering the engine and train service employees, telegraphers, signal employees, are conducted by the Assistant General Manager, located at Syracuse. This same condition exists on the Line West of Buffalo where there is an Assistant Vice President & General Manager in charge, located at Cleveland; on the Michigan Central where there is an Assistant Vice President & General Manager in charge, located at Detroit, and on the C. C. C. & St. L., where there is a Vice President & General Manager in charge, located at Cincinnati, and also an Assistant General Manager at Indianapolis.

For the clerical employees, there are separate agreements on the Boston & Albany Railroad, New York Central Railroad, Michigan Central Railroad and C. C. C. & St. L. Railway. The negotiations for the agreement on the New York Central Railroad are conducted in the offices of the Vice President-Personnel because the agreement is [fol. 167] applicable to all departments. This is also true on the Michigan Central and C. C. C. & St. L.

I mean by that that the Assistant Vice President and General Manager at Detroit negotiates for all departments on the Michigan Central, and at Cincinnati the Assistant

Vice President and General Manager negotiates for all on the Big Four. Grievances on the New York Central Railroad are handled within the respective departments which come under the agreement, appeals being made to the highest officials in the respective departments.

The same situation exists with reference to the shop crafts' employees, i.e., separate agreements are in effect on the Boston & Albany Railroad, New York Central Railroad, Michigan Central Railroad and C. C. C. & St. L. Railway.

For the telegraphers, separate agreements are in effect and negotiated on the Boston & Albany Railroad, New York Central Railroad (Buffalo and East), New York Central Railroad (West of Buffalo), Michigan Central Railroad and C. C. C. & St. L. Railway. In addition there is a separate agreement covering the telegraphers on the Grand Central Terminal, which covers the service at Grand Central Terminal and one tower in Mott Haven Yard.

For the Dining Service, there is one agreement covering the stewards which is applicable to the entire system, but, for the cooks and waiters, we have separate agreements for the Boston & Albany Railroad, New York Central (Buffalo and East) and New York Central (West of Buffalo, including the Michigan Central Railroad and C. C. C. & St. L. Railway). The employes are represented by two Locals, one covering the Line East and Boston & Albany and one covering operations out of Chicago, which includes the New York Central (Line West), Michigan Central and Big Four. Negotiations are now in progress endeavoring to bring about a uniform agreement which will be applicable to all portions of the System, although the separate agreements mentioned above will be preserved.

For the Maintenance of Way, separate agreements are in effect on the Boston & Albany Railroad, New York Cen- [fol. 168] tral Railroad, Michigan Central Railroad and C. C. C. & St. L. Railway. The agreements are negotiated by representatives of the General Manager on the Boston & Albany and by this office for the New York Central Railroad; on the Michigan Central by the Assistant Vice President & General Manager, and on the C. C. C. & St. L. by the Vice President & General Manager.

For the signal employees, separate agreements are in effect and negotiated on the Boston & Albany Railroad, New

York Central (Buffalo & East), New York Central (West of Buffalo), Michigan Central Railroad and C. C. C. & St. L. Railway.

For the Train Dispatchers there are separate agreements with the American Train Dispatchers' Association on the Boston & Albany, New York Central and C. C. C. & St. L. Railway; the agreement on the Michigan Central is with the Order of Railroad Telegraphers. When it becomes necessary to negotiate changes in the New York Central agreement, special arrangements are usually made for joint handling for the New York Central Railroad and Big Four.

The Railroad Yardmasters of North America holds agreements on the New York Central Railroad, excepting Ohio Central Lines, and Michigan Central Railroad. No agreement is in effect on the Boston & Albany Railroad. On the C. C. C. & St. L. Railway, there is an agreement in effect with the Big Four System Yardmasters' Association. On the Ohio Central Lines, the Brotherhood of Railroad Trainmen represent the yardmasters.

It is common knowledge that the organizations representing the engineers, firemen, conductors and trainmen have been recognized and have negotiated agreements over longer periods in the past than any other organizations. The Switchmen's Union held the first agreement for yard conductors and brakemen on what was formerly the Lake Shore & Michigan Southern Railway. In the Engine and Train Service Organizations the general practice is to have [fol. 169] committees cover territories coextensive with the jurisdiction of General Managers, and the prevailing practice has been to have separate agreements coextensive in scope with the jurisdiction of General Managers. Each agreement contains certain provisions peculiar to the territory covered thereby. The organizations also have separate committees on these separate segments. Our experience has demonstrated that these separate committees insist upon recognition of conditions in their territories. The management has also had to recognize the existence of separate committees representing practically all of the different organizations with which agreements have been negotiated. The management has felt that this is entirely in harmony with the provisions of the Railway Labor Act, especially the provisions under the title General Purposes, reading:

"(2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employes to join a labor organization; (3) to provide for the complete independence of carriers and of employes in the matter of self-organization to carry out the purposes of this Act;"

In the present controversy, it should be understood that long before the Transportation Act of 1920, and also under the Railway Labor Act of 1926 and the Railway Labor Act of 1934, the several portions of the New York Central followed a practice corresponding with what is now provided in the quoted provisions of the Railway Labor Act. In the case at issue on what was the Lake Shore & Michigan Southern Railroad (now the New York Central, Line West) and the Michigan Central Railroad, the right of yardmen to organize according to their desires was recognized. Even before it was the practice to have written agreements, recognition was given to committees of the Switchmen's Union to represent yardmen employed in certain yards on the Lake Shore & Michigan Southern Railroad and on the Michi-[fol. 170] gan Central Railroad. Correspondence files show that the question arose in 1909 when the Lake Shore & Michigan Southern, without any written agreement, recognized the Switchmen's Union as representing the yardmen at each yard where the majority of yardmen so desired. A large majority of the yardmen on the Lake Shore & Michigan Southern were employed in these yards. This situation also existed on the Michigan Central Railroad where the yardmen in yards at Detroit and West were represented by the Switchmen's Union.

The subject became an issue under the Clark-Morrissey Award of 1910, which included yardmen, but the arbitration was with the Order of Railway Conductors and the Brotherhood of Railroad Trainmen; consequently, the Switchmen's Union was not a party to it. The Brotherhood of Railroad Trainmen recognized that the award only applied to yards where they represented the yardmen. On the Lake Shore & Michigan Southern, the award only applied to the yards at Youngstown, Sharon, Elkhart, South Bend and LaPorte. The yardmen in the Chicago territory were included in a separate arbitration. On the Michigan Central Railroad, the award was confined to yards East of the Detroit River.

Later, when formal written agreements were entered into with the Brotherhood of Railroad Trainmen, their scope was confined to those yards (Alliance and Minerva were added later) and the agreements with the Switchmen's Union covered all other yards on the Lake Shore & Michigan Southern Railroad and on the Michigan Central Railroad all yards Detroit and West. This is the situation today.

An examination of the agreements on file with your Board, and as listed in the Exhibit Carrier No. 1, shows that there cannot be any dispute as to representation with the Brotherhood of Railroad Trainmen on the Boston & Albany Railroad, New York Central Railroad (Buffalo & East) and C. C. C. & St. L. Railway as the Brotherhood of [fol. 171] Railroad Trainmen holds the agreements on those properties. It has been our belief that the practice which the organizations have followed has promoted orderly procedure and effective enforcement of the intent of the Railway Labor Act which is to recognize the representatives of the employees and to make and maintain agreements. The manner in which committees are constituted within the various labor organizations has a vital effect upon the ability to have satisfactory relations between the managements and the employes. Though recognizing the separate committees, we have kept friction at a minimum.

From the management's standpoint we have also felt that, with a system the size of the New York Central and the necessary diversified conditions which are bound to exist, it is necessary and desirable from the standpoint of management and the interests of the employees to be in a position to respect such different conditions. Surely the long history of these negotiations and the satisfactory results flowing therefrom demonstrates that there must be sound grounds for the separate negotiations and agreements. To introduce the treatment of the whole system as a unit could not help but seriously impede satisfactory relations which are so necessary to the proper conduct of negotiations and operation of the railroad. The problems affecting the different classes of service, such as the operation of trains, clerical work in the numerous departments, maintenance in the mechanical and maintenance of way departments, signal department and other departments, surely ought to demonstrate the undesirability of the requirement

that the system must be treated as a unit when throughout the entire history of the New York Central this has never been required.

The Mediation Board has had to conduct elections to settle questions of representation on several portions of the System. Certification R-113 dated September 30, 1935, covered an election for representation of conductors and trainmen on the C. C. C. & St. L. Railway.
[fol. 172] Certifications R-452 and R-460 dated June 23, 1938, covered elections held on the Boston & Albany Railroad.

Certification R-161 dated October 28, 1935, covered election for representation of yardmasters on the Ohio Central Lines which are a subdivision of the New York Central Railroad, West of Buffalo. Notwithstanding the Railroad Yardmasters of North America, which holds the agreement on the Line West, petitioned the Mediation Board to have the election cover the entire Line West, your Board confined the election to the Ohio Central Lines.

Certification R-207 covered the representation of so-called switchtenders on the Indiana Harbor Belt Railroad. Your Board confined the election to "the employes involved in the dispute, which were held to be only the levermen, towermen, train directors and operator-switchtenders on that railroad." There were a great many switchtenders on the Indiana Harbor Belt Railroad but they were not included in the election. If they had been included, there possibly would have been no necessity for having an election as they exceed the number who were subject to the election.

We have believed that the action of the Mediation Board in conducting these elections was in complete harmony with the obligations imposed upon the carriers in Section 2 under the title General Purposes of the Railroad Labor Act. In connection with the classes of employes involved in the present controversy, to have a vote include portions of the railroad where the Brotherhood of Railroad Trainmen is recognized and on which there cannot possibly be any dispute would violate a continuous history of more than thirty years' duration in making agreements covering these particular classes of employes.

The management's interest in this matter is to do everything in its power to avoid disrupting practices which have been followed continuously and which the management feels

have been conducive to effectively dealing with the labor organizations. Where a labor organization has shown that it represented a majority of the craft or class of employes, [fol. 173] we have negotiated with it. The management is not conscious of having any preference for one organization or another, but we are hopeful that no action will be taken by your Board which will radically disturb relations which have existed for so long a time.

I can elaborate on that, gentlemen, and there are some things that I really feel I ought to say, but I don't want to do anything here or take any part in this thing that might cause someone to think that we have favorites or that we prefer one class or another, but counsel for the Trainmen has paid me a compliment, at least intimating that perhaps because of my experience I might have learned something.

I have learned something, Mr. Bayly, and I have learned a lot about human nature, and I think I know something about the nature of these trainmen, and these other people, and I am going to take the risk of overstepping what a railroad official ought to say, under this law, in regard to intimidating or showing a preference of one or another, to state one thing I have learned.

We all know the old saying "we are all human; some a little bit more so."

The Chairman: I might say for the benefit of the record that if in reading Mr. Walber's statement there are any opinions therein as to the agreements that have been negotiated, or might be negotiated, that such statement, of course, is not put in at the request of the Board, because as has been stated previously, the issuance of a certification by the Board is one thing and of course the negotiation of an agreement following certification is another thing, whether or not it is negotiated by the System or whether it is negotiated by parts of the System, or by individual yards; that is a matter of handling between the committees and the management in their separate conferences.

Mr. Cantley: Mr. Chairman, I would like to ask whether we are to construe your statement as indicating that any [fol. 174] reference in this statement of Mr. Walber's which is in the nature of an opinion, as to what the form of agreement should be, is to be stricken from the record?

The Chairman: We will let it stand in the record, but we will only pay attention to the information.

. . . . . .

Mr. Cantley: Before you proceed, what I would like to have you tell us is whether or not it would still not be possible to continue the form of representation and negotiation that now exists.

The Witness: That now exists with the Switchmen's Union where they represent the majority of men in the unit.

Mr. Cantley: With the schedules on individual properties?

The Witness: We would have this predicament. Anybody can see—he doesn't need to be a wise man—that if you were to combine the Line East with the Line West, the Line East as between those two portions would have 62 per cent of the employes, and they would immediately submerge the Line West, just the same as what would have happened on that yardmaster election on the Ohio Central if the Board had voted the Line West with the Ohio Central there wouldn't have been anything left to the trainmen getting representation on the Ohio Central. But by keeping the Ohio Central separate then the trainmen were able to acquire that representation, but the Yardmasters Association of North America, holding the agreement on the Line West, would have outvoted them about four to one.

Thinking I know something about human nature, I think these trainmen, yard brakemen and conductors who have been working in yards which have been subject to the agreement with the Switchmen's Union would be an extraordinary type of human nature if they did not resent having to accept jurisdiction by some other organization.

They were the pioneers in being recognized on the Michigan Central and on the Lake Shore. They got recognition [fol. 175] before the Brotherhood of Railroad Trainmen ever got recognition.

I think they will be odd human beings if they take that gracefully, and if I understand what has been told me by our own officials—not by the men nor any general chairman nor any labor fellows—our own officials anticipate and are very much concerned about what might happen in the event they were ordered to cancel agreements with the Switchmen's Union on both the Michigan Central and Lake Shore,

and incorporate them in the New York Central agreement. Our own officials are very much disturbed about that.

We have the responsibility for running a railroad, you know, and with the law reading the way it does, and I ought to know about that from having been in on the 1926 amendments, and all that, I ought to know about that, and we know that, but we still have responsibility for running a railroad, and we are the fellows who will have to have all the burden.

I hope nothing would happen, but it would be very odd if they didn't show resentment over that.

I think I owe that to my position to say that, if I am permitted to leave that in the record, and I would like to leave it there.

Mr. Bayly: Mr. Walber, you are concerned about the treatment of the minority on behalf of the majority in case the carrier is recognized as the unit. Is that right?

The Witness: You are right, in case the carrier is one unit.

Mr. Bayly: And you say there are certain sentimental relations developed there, and it is chiefly sentimental, is it not?

The Witness: No, I think it is much more substantial than sentimental.

Mr. Bayly: In view of the position that this Board has heretofore taken, that it does not affect existing rights of the minority acquired under their agreements, would you still say that?

[fol. 176] The Witness: May I explain what I understand to be the existing rights under the agreements, in order to explain my statement?

Mr. Bayly: If you can answer my question, do that, and then explain it any way you want to.

The Witness: My understanding is that the existing rights would only exist long enough for the new organization to come in and serve its notice cancelling the agreement and requesting the substitution of their agreement over all the yards. From that time on there would be nothing left to the rights of the minority.

Mr. Bayly: In other words, you are imputing an inequity to the minority, based on the treatment of the majority. Is that right?

The Witness: Oh, they would get the same working conditions. They have them very largely today. There is very little difference between the working conditions of one and another, but you know how fellows feel with reference to labor organizations. You have members of the American Federation of Labor who wouldn't have anything to do with the C. I. O. if their lives depended upon it, and conversely.

You have engineers who won't accept representatives by the Brotherhood of Locomotive Firemen and Enginemen, and conversely you have conductors who won't accept representation by the O. R. C. but want the B. of R. T., and conversely.

Now, why those things are nobody knows. We have got to recognize them and accept them as facts, and we can't disregard them, and nothing we can do is going to change it. It is that mental attitude on the part of these employes that we anticipate is going to make a world of trouble for us, if there is any change in this situation.

Mr. Cantley: Doesn't the same condition exist with respect to the individual units as we have been talking about them here?

[fol. 177] For example, Boston & Albany election to which you referred, there was a minority there that was submerged. Wouldn't their feeling be just the same as the feeling of this minority?

The Witness: I think so, Mr. Cantley, but with us it goes still further than that; it goes beyond that.

We hear a lot of criticism and a great number of claims going to the Board of Adjustment in Chicago.

I am going to say in the record that the overwhelming proportion of those claims from certain portions of our railroads are due to nothing less than the row between the two organizations. One tries to outdo the other in prosecuting claims. It is true on the B. & A. Railroad. It is true on the P. & L. E. It is true on the Michigan Central Railroad, and for no other reason. We know those things and you know them.

Mr. Cantley: May I ask what organizations you refer to?

The Witness: On the B. & A. between the Conductors and Trainmen, and on the Michigan Central it is as between the Switchmen's Union and the Brotherhood of Railroad

Trainmen. One tries to outdo the other in the taking up and prosecuting of claims.

Mr. Cantley: Wouldn't some of that be eliminated if there were only one organization?

The Witness: I don't know whether it would or not. I am inclined to think it would be reduced. I mean the friction would be reduced, but I am not saying the number of claims would be reduced.

* * * * * * *

The Chairman: The parties, as we understood it, have a direct interest and are the Brotherhood of Railroad Trainmen and the Switchmen's Union of North America in this particular docket, case R-690.

Mr. Mulholland: Who made us parties? You say it appears we have an interest in this matter and ask us to make our statement.

[fol. 178] The Chairman: That is on behalf of the other organizations outside of the Switchmen's Union and the Brotherhood of Railroad Trainmen, but the parties, in so far as the Board's certification or decision or findings may apply, will be involving the Brotherhood of Railroad Trainmen and the Switchmen's Union of North America, for the reason that those two organizations now represent the employes that are involved in the dispute.

For other organizations, not holding an agreement covering the employes that are involved in the dispute, manifesting an interest in this dispute, we have said they may file briefs limited to the issues involved in this dispute, and the issue as we understand it involved in this dispute before the Board is not what is a craft or class of employes for the purpose of voting in the election, but what is a carrier.

Of course we have n't said before, but we state now that as a rule we get the information as to what constitutes a carrier from the Interstate Commerce Commission, but the parties will not agree upon whether it was four lines or three separate lines—in other words, a whole carrier or parts of a carrier. That is what we are making an effort to determine in this investigation.

Mr. Mulholland: Do I understand you are foreclosing us from trying to convince you that an adequate and proper administration of the Railway Labor Act would not allow

you to do what the Brotherhood of Railroad Trainmen is asking you to do?

The Chairman: No. We will take into consideration all the evidence that has been put into the record that we think is germane to the subject-matter.

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[fol. 179] IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Before Honorable D. Lawrence Groner, Chief Justice, and Honorable Fred M. Vinson and Wiley Rutledge, Associate Justices.

No. 8346

SWITCHMEN'S UNION OF NORTH AMERICA, et al., Appellants,

vs.

NATIONAL MEDIATION BOARD, BROTHERHOOD OF RAILROAD TRAINMEN, et al., Appelles.

ARGUMENT AND SUBMISSION—November 13, 1942

Argument in the above entitled case was commenced by Mr. Donald R. Richberg, attorney for appellants, continued by Mr. Robert L. Stern, attorney for Appellee National Mediation Board and Mr. Bernard M. Savage, attorney for Appellee Brotherhood of Railroad Trainmen, and concluded by Mr. Donald R. Richberg.

Appellants allowed six days to file memorandum; appellees allowed to file reply thereto.

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[fol. 180] IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 8346

SWITCHMEN'S UNION OF NORTH AMERICA, et al., Appellants,

vs.

NATIONAL MEDIATION BOARD, et al., Appellees.

Appeal from the District Court of the United States for the District of Columbia

Mr. Donald A. Richberg, with whom Mr. Rufus G. Poole was on brief, for appellants.

Mr. Robert L. Stern, Special Assistant to the Attorney General, with whom Assistant Attorney General Arnold and Mr. John H. D. Wigger, Special Attorney, Department of Justice, were on the brief, for appellee National Mediation Board.

Mr. Bernard M. Savage, with whom Mr. Alfred L. Bennett was on the brief, for appellee Brotherhood of Railroad Trainmen.

Before Groner, Chief Justice, and Vinson and Rutledge, Associate Justices.

OPINION—February 15, 1943

VINSON, Associate Justice:

This appeal concerns a jurisdictional dispute under the Railway Labor Act [1] between the appellee Brotherhood of Railroad Trainmen (Brotherhood), and the Switchmen's Union of North America (Switchmen's Union), appellants. The right to represent the 6,087 yardmen [2] employed in the several yards of the New York Central Railroad Company

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[1] Act of May 20, 1926, 44 Stat. 577, c. 347, § 1, as amended by the Act of June 21, 1934, 48 Stat. 1185, c. 691, § 1, and the Act of Aug. 13, 1940, 54 Stat. 785, c. 664, §§ 2, 3: 45 U. S. C. A. §§ 151-153.

[2] The figure was submitted as an approximation.

is the subject of controversy. The Brotherhood invoked the services of the appellee National Mediation Board (Board), presenting signed authorizations of 4,749 of the yardmen. The Board investigated the alleged dispute and held a hearing in which it made two important findings: (1) the New York Central Railroad Company is a single carrier for the purposes of the Act;[3] (2) as a matter of law, the Act vested the Board with no discretion to split a single carrier for the purpose of determining those eligible to vote for the representative of a craft or class.

The Board conducted an election in which an overwhelming number[4] of yardmen voted to be represented by the Brotherhood. The Board accordingly certified the latter as sole representative of all yardmen employed by the New York Central Railroad Company. The Switchmen's Union contested the certification, but was denied injunc- [fol. 181] tive relief therefrom by the District Court. The Switchmen's Union is contending here that certain portions of the New York Central Railroad Company's lines, wherein it has acquired separate representation contracts with the yardmen, are separate carriers, and that the yardmen working thereon are separate crafts or classes entitled to a separate representation. Both the Board and the District Court have found these contentions to be without merit. The remainder of this opinion will develop the basis for our conviction that the judgment must be affirmed.

It should be stated at the outset that we are not concerned with whether the Railroad Company can be considered a single carrier *for all purposes*. It is our province only to determine whether the Board was empowered by Congress to treat it as a unit *for the purposes of collective bargaining*.

I. *The Integral Character of the Railroad Company*

The present composition of the New York Central Railroad Company is the consequence of consolidation and the

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[3] The Railway Labor Act, as amended in 1934, cited *supra* note 1, will be so designated throughout the opinion.

[4] Of 7,187 employees eligible to vote, 4,112 voted for the Brotherhood and 941 for the Switchmen's Union. More were entitled to vote than were presently employed as yardmen.

acquisition of long term lease interests in sister railroads. In 1914, the New York Central and Hudson River Railroad Company,[5] operating from New York to Buffalo, and the Lake Shore and Michigan Southern Railway Company, operating from Buffalo to Chicago, consolidated to form the New York Central Railroad Company. These two once separate sections of the consolidated railroad, while now commonly referred to respectively as New York Central-Lines East and New York Central-Lines West, are simply operating regions and have no corporate existence.

The Boston and Albany Railroad Company, the Michigan Central Railroad Company, the Big Four,[6] and the Toledo and Ohio Central Railway Company are now a part of the New York Central Railroad Company, which operates these lines under long term leases. Three of these leases are for 99 years, renewable in perpetuity; the fourth terminates with the corporate existence of the lessor.[7] Further, the New York Central Railroad Company has acquired 99.44 percent of the stock of the Michigan Central, 98.45 percent of the common stock and 85.18 percent of the preferred stock of Big Four, and a corporate interest in the Toledo and Ohio Central in excess of the amount necessary to possess a controlling ownership therein. It owns no stock in the Boston and Albany Railroad. All of the railroads hereinbefore referred to are now collectively known and designated as the New York Central Railroad Company, herein usually called the Railroad Company.

For many years, the yardmen working on the Railroad Company's lines have been employed solely by the Railroad Company; they have been represented by and are working under contracts negotiated by either the Brotherhood or the Switchmen's Union. On July 2, 1940, when the services of the Board were invoked, the Brotherhood represented all the yards on the Big Four, Toledo and Ohio Central, Boston and Albany, New York Central-Lines East, those

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[5] The Boston and Albany Railroad Company was leased in 1900 by the old New York Central and Hudson River Railroad Company.

[6] Cleveland, Cincinnati, Chicago, and St. Louis Railway Company.

[7] The lease on the Toledo and Ohio Central Railway Company endures for the corporate existence of the lessor.

[fol. 182] yards on the Michigan Central east of the Detroit River,[8] and nine yards on the New York Central-Lines West. Switchmen's Union represented those yards on the Michigan Central west of the Detroit River and all but nine yards on the New York Central-Lines West.

The Act, as amended in 1934, expresses the purpose of providing for "the complete independence of carriers and of employees in the matter of self-organization". Section 1, First, purports to define a carrier:

> The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad
> • • •[9]

Appellants contend that, by the terms of the definition in Section 1, First, in which a "carrier" includes "*any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad*", the two lines upon which they have acquired representation contracts are carriers, and separate carriers by the terms of the Act. When the clause relied upon is replaced in its context and the section viewed *in toto*, it cannot be given the construction which appellants urge. That portion of the definition which precedes the italicized quotation appears to be inclusive of all functions of a carrier's railroad cars. We believe the remainder of the sentence is designed to include all the auxiliary services performed by instrumentalities other than railroads over which the carrier has the designated control. The words "any company", as used in the italicized excerpt relied upon by appellants, do not, in our

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[8] A portion of the lines east of the Detroit River is in Canada. No attempt was made to place this portion under the jurisdiction of the Board, and it is not involved in this controversy.

[9] 48 Stat. 1185-6.

opinion, mean "any *railroad* company"; instead the purpose of the words is to designate *other* types of companies which are owned or controlled by a carrier and employed for the enumerated purposes, and to place these companies under the authority of the Board.[10] [Italics supplied]

In any event, it is a sufficient answer to the appellants' argument to say that, even if we misinterpret the somewhat ambiguous definitive provisions of this section, and Congress indeed meant that a *railroad* company so owned or [fol. 183] controlled by a carrier was to be considered as a "carrier" for the purposes of the Act, the appellants' position still begs the question. Even if a *railroad* company so owned or controlled was intended to be a "carrier", there is nothing in the definition to show that it was intended to be a *separate* carrier. The inference is as valid that, by being so owned and controlled, the railroad company was to be considered *as a part* of the carrier that owned or controlled it.

We feel it is necessary to set out at this point the remaining relative sections of the Act as amended in 1934, in order that the evidence to follow may be examined with a mind to the legislative purpose:

> Section 2. Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any

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[10] The phrasing of the 1926 Act, which, according to the reports of the Congressional Committees handling the bill, meant the same as the 1934 amendment section which corresponds with it, confirms this construction.

> The term "carrier" includes any express company, sleeping-car company, and any carrier by railroad, subject to the Interstate Commerce Act, including all floating equipment such as boats, barges, tugs, bridges and ferries; and other transportation facilities used by or operated in connection with any such carrier by railroad, and any receiver, etc. [44 Stat. 577]

Further, the words in Section 1, First, of the Act, "which operates any equipment or facilities or performs any service", should be read as if followed by the words "in connection with transportation services performed by railroads", according to the testimony of Joseph B. Eastman, who drafted the Act.

craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. * * *

* * * * * * * * *

Section 2. Ninth. If any dispute shall arise *among a carrier's employees* as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated *the Board shall designate who may participate in the election* and establish the rules to govern the election. * * * [Italics supplied.]

The evidence of the organization and management of the Railroad Company is most compelling upon the question of its integral character for the purposes of the Act. None of the lessor-divisions, *i.e.*, the Big Four, Michigan Central, etc., operates any equipment, conducts any transportation or service, or employs or pays any of the yardmen who are working upon its lines. All of these operations are performed solely by the Railroad Company. Each of the lessor-divisions has long term leases, in turn, on a number of smaller railroads, but they are now operated by the Railroad Company under its lease with the intermediate lessors.

Railway Company officers, such as Executive Vice President, Vice President in charge of Accounting, Vice President in charge of Finance, Vice President in charge of

[fol. 184] Construction, Real Estate and Developments, and Vice President of Purchases and Stores, deal with policies applicable to all of the properties, and coordinate activities where the use of more than one part of the system is involved. The Executive Vice President of the Railroad Company coordinates the activities of the Mechanical and Maintenance of Way Departments. Train service coordination is secured through managers of passenger and freight transportation who plan and supervise the services affecting all lines. Corresponding officers on the separate properties look after detailed operations thereon. For some purposes, but not all, the Railroad Company treats the leased lines as separate divisions, just as its Lines East and West are operated; but the evidence tends to show that all executive authority is centralized in the officials of the railroads as a whole, and that all important questions are decided by them.

Management of the Railroad Company's affairs follows neither the corporate nor geographical lines of the divisions. The Superintendent at Toledo has jurisdiction over the entire Toledo Terminal, in which are included portions of the Michigan Central, New York Central-Lines West, and the Toledo and Ohio Central. The timekeeping department located at Detroit handles payrolls for the New York Central-Lines West, Michigan Central, Big Four, and the Toledo and Ohio Central; the payrolls for the New York Central-Lines East and the Boston Albany are prepared in Utica. The Superintendent of the Western Division has jurisdiction over the Illinois Division of the New York Central-Lines West, the Western Division of Michigan Central, the Michigan Central yards in Chicago, and the Big Four yards at Danville, Illinois. The jurisdiction of the Medical Director of the Railroad Company extends throughout the entire system, with the possible exception of the Boston and Albany, as a result of a gradual unification process. The New York Office of the Railroad Company has to approve expenditures for equipment on the subsidiary lines. Since 1935, engine numbers on the Big Four locomotives have been changed to correspond with the Railroad Company's locomotive numbers, and in similar fashion, numbers on box cars and other equipment have been conformed, even when such equipment does not leave the lines of the Big Four. No per diem charge is exacted on locomotives and cars exchanged between these lines.

Negotiations between management and representatives of employees are subject to the general supervision of the Vice President-Personnel of the Railroad Company. Although his function is primarily that of advisor, he has, on occasion, participated in actual changes in rules or working conditions applicable only to certain subsidiaries. With respect to employee grievances, bureaus have been established at certain points not necesarily corresponding to the several divisions. In some cases the handling of grievances has been concluded with the bureau or Vice President located at the particular point; in other instances, the grievances have been handled by the Vice President-Personnel before submitting them to the National Railroad Adjustment Board. Existing agreements between the management and representatives of other crafts or classes vary in their territorial scope, but in most instances these agreements cover the employees of a given craft or class on the leased lines separately. Only in the instance of the dining car stewards is there one representative agreement cover- [fol. 185] ing all the lines. Many of these agreements had been made before the operations of the leased lines were taken over by the Railroad Company. There has not been a general movement on the part of either management or employees to adopt agreements covering the entire organization. There have been, however, several instances of merging seniority rosters of yardmen in service on different divisions.[11] There is evidence, for instance, that the Switchmen's Union, itself has combined the Michigan Central and New York Central-Lines West in this regard.

The manner in which reports are made to the Interstate Commerce Commission is additional support for the conclusion we reach. Since the Railroad Company manages all operations and pays and controls all the employees, it files with the Commission one annual operating report for the entire organization. These reports are not broken

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[11] One such instance is where the rosters of yardmen on the Michigan Central were set behind the rosters of the yardmen on the New York Central West at Toledo. As a result any new yardmen hired thereafter would have seniority on both the New York Central and the Michigan Central. Similarly, New York Central yardmen were included in the rosters of Michigan Central yardmen located at Detroit, Lansing, and Jackson, Michigan.

down to show the operation results of the several divisions. The Railroad Company also files thirteen different monthly and quarterly reports which include the results of operations over all of its lines. A few of these monthly and quarterly reports are filed separately by the Boston and Albany,[12] but important reports, such as Operating Revenues and Operating Expenses, Selected Income and Balance Sheet Items, Railway Accidents, and freight tonnage are reported by the Railroad Company for all the lines. The leased lines retain their corporate identity and file annual *financial reports* with the Interstate Commerce Commission. Also, separate monthly accident reports are filed *for* them, all of which are signed by the General Claims Attorney of the Railroad Company; the Railroad Company similarly segregates the monthly accident reports of its Lines East and West.

The Board has admitted in its brief that the lessor lines might still be considered carriers under the Act in a purely technical sense as they remain subject to the Commission in filing the annual financial reports. The Board argues, however, that the Act deals with relations between carriers and employees engaged in performing transportation, and was obviously intended to apply to operating carriers, not to bare corporate entities which exist only for the purpose of receiving rentals and distributing the proceeds; and that the Board was justified for the purposes of the Act in determining that the carrier is the operating entity by which the workers are employed, rather than the corporate shell which has nothing to do with the operations of the railroad or its labor relations. We believe that the words of the Act support this contention. The Act gives the Board certain powers "If any dispute shall arise *among a carrier's employees*". [Italics supplied] The Michigan Central and the New York Central-Lines West (as well as the other leased lines) do not employ any yardmen. The Railroad Company hires and pays the yardmen on all the lines. Part of these yardmen may *work* on the Michigan [fol. 186] Central or some other division, but they are not

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[12] The record shows that the separate reports for this line were filed at the specific request of the Commission, which desires this breakdown of information because of the relative statistical importance of that division of the Railroad Company in the New England region.

employed, paid, or controlled by that division but by the Railroad Company. The only employer involved in this case is the Railroad Company; the only employees involved are its employees.

The foregoing evidence relating to the correlated management and operation, the conduct of labor relations, and the manner of reporting to the Interstate Commerce Commission, stands substantially unchallenged. It amply substantiates the finding of the Board and the District Court that the Railroad Company constitutes a single carrier for representation purposes. The Act has been so interpreted by the Board since its first annual report. We quote from it:

> * * * Although the term "carrier" is clearly defined in the Act, questions have been arisen in connection with representation disputes which made it necessary for the Board to interpret its meaning. * * * The Board has ruled generally that where a subsidiary corporation reports separately to the Interstate Commerce Commission, and keeps its own payroll and seniority rosters, it is a carrier as defined in the Act, and its employees are entitled to representation separate from other carriers who may be connected with the same railroad system.
>
> If the operations of a subsidiary are jointly managed with operations of other carriers and the employees have also been merged and are subject to the direction of a single management, then the larger unit of management is taken to be the carrier rather than the individual subsidiary companies.[13]

The Board's decisions have been based upon this interpretation, and two or more lines have been held to be single carriers for the purposes of the Act in several instances.[14] The Board has previously considered the Rail-

[13] First Annual Report for the fiscal year ending June 30, 1935, p. 22. See also National Mediation Board, The Railway Labor Act and the National Mediation Board (1940), p. 17.

[14] In the matter of Representation of Employees of the New York, Chicago and St. Louis Railroad (Switchmen), Case R-47; In the matter of the Representation of Employees of the New York, Chicago & St. Louis Railroad Co. (Maintenance of Way Employees), Case R-248.

road Company a single carrier for the purpose of determining the representative of dining car stewards thereon.[15] A comparison of the New York Central Railroad Company with what is commonly called the New York Central Railroad *System* will serve as a further indication that the former is a unified entity under a single management. The Railroad Company, in addition to its holdings heretofore listed, has a stock interest in the Pittsburgh and Lake Erie Railroad Company, the Indiana Harbor Belt Railroad Company, and the Chicago River and Indiana Railroad Company, together with its lessor, the Chicago Junction Railway. These, however, are all operating roads—that is to say, they are not operated by the Railroad Company, and they report separately to the Interstate Commerce Commission. The New York Central Railroad System is the New York Central Railroad Company plus these four roads. It is not contended that the Railroad System, on which there are independent operating units, is a single carrier. Only that [fol. 187] part of the Railroad System which is operated as a unit has been unified for collective bargaining purposes.[16]

We hold, therefore, that it was the intention of Congress that it should vest in the discretion of the Board whether or not to consider an organization operated and managed in the manner of the Railroad Company a single carrier for the purposes of the Act. The finding of the Board clearly involves no abuse of discretion. It seems a very reasonable conclusion to reach from the evidence presented.

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[15] In the matter of the Representation of Employees of the New York Central Railroad System (Dining Car Stewards), Case R-263.

[16] In the Official Railway Guide for December, 1940, p. 134, the caption for the New York Central Railroad System is: "The New York Central Railroad Company; Pittsburg & Lake Erie Railroad Company; Indiana Harbor Belt Railroad Company; Chicago River & Indiana Railroad Company; Chicago Junction Railway (C. R. & I R. R. Co. lessee)." The description *does not* include or mention the so-called Boston and Albany, Michigan Central, Big Four, or Toledo and Ohio Central.

We are without power, therefore, to alter the Board's decision as sustained by the District Court. [17]

II. *The Yardmen Constituted a Single Craft or Class*

The remaining question concerns the propriety of the Board's finding that all the yardmen employed by the Railroad Company constitute a single class or craft. The issue is whether, when the employees of a single craft or class have organized, bargained, and made contracts with their employer by groups or divisions, the Board is compelled, upon a proper invocation of its services, to destroy these groupings by forcing the same into a single bargaining unit. Appellants admit that, were there no separate existing contracts as here, the action of the Board in unifying the Railroad Company might be proper; but that, as it is, the Board is confined to the dispute of the particular division under the existing contract. We believe appellants come close to admitting themselves into a losing position. The act plainly provides that the *majority* of any craft or class shall determine *the representative* (not representatives) of the craft or class for the purposes of the Act. Appellants cannot complain of interference with their contracts if the provision is a lawful exercise of Congressional authority. Their contracts were necessarily made subject to that authority. It is an established principle that appellants must be considered to have made their contracts in contemplation of the contingency that they might be invalidated by a proper exercise of legislative power. [18] The contention of appellants would render the

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[17] Shields v. Utah Idaho Central Railroad Co., 305 U. S. 177, 185; Brotherhood of Railway & Steamship Clerks, etc. v. Virginian Railway Co., 125 F. (2) 853, 857 (C.C.A. 4th); Chicago, S. S. & S. B. R. R. v. Fleming, 109 F (2d) 419, 420 (C. C. A. 7th); Nashville, etc. Ry. v. Railway Employees' Department, etc., 93 F. (2d) 340, 342 (C. C. A. 6th), *cert. denied*, 303 U. S. 649; National Federation of Railway Workers v. National Mediation Board, 71 App. D. C. 266, 270, 110 F. (2d) 529, 533, *cert. denied*, 310 U. S. 628.

[18] National Labor Relations Board v. Newport News Shipbuilding & Dry Dock Co., 308 U. S. 241; Semler v. Oregon State Board of Dental Examiners, 294 U. S. 608, 610;

[fol. 188] Board powerless to act no matter how unified the craft or how determined the members thereof for a particular representative, so long as any part or group thereof had acquired another representative. The Board would be deprived of the power to determine which members of the class or craft could participate in an election whenever a jurisdictional issue was raised—a power expressly delegated to it by Section 2, Ninth, which has been sustained by the courts on numerous occasions.[19] The purpose of the Act was to enable the Board to unify the craft; no proviso of the nature contended by appellants modifies its powers in this regard.

It is true that there is an expression in Section 2, Fourth, that "Employees shall have the right to * * * bargain collectively through representatives of their own choosing," but "employees" is qualified and defined by the sentence following. It is there clearly stated that not any group, part or division of a craft or class is entitled to a

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Sproles v. Binford, 286 U. S. 374, 390; Union Dry Goods Co. v. Georgia Public Service Corp., 248 U. S. 372, 375.

In Franklin v. Pennsylvania-Reading Seashore Lines, 122 N. J. Eq. 205, 193 Atl. 712, 718, rosters of seniority, priority, and the positions of employees were consolidated after the unification of two railroads. The complaining employee representative raised the question that a contract existed between the men and the railroad by which they had protected seniority rights because of employment upon the former separate lines. The court held:

> "* * * It would seem that such rights as existed respecting the former railroads ceased upon the men becoming employees of the defendant railroad company. * * *"

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[19] Association of Clerical Employees, etc., v. Brotherhood of Railway and Steamship Clerks, 85 F. (2d) 152 (C. C. A. 7th); Chicago, S. S. & S. B. R. R. v. Fleming, 109 F. (2d) 419 (C. C. A. 7th); Brotherhood of Railroad Trainmen v. National Mediation Board, 66 App. D. C. 375, 88 F. (2d) 757; Brotherhood of Locomotive Firemen, etc., v. Kenan, 87 F. (2d) 651 (C. C. A. 5th), *cert. denied*, 301 U. S. 687.

representative of its own choosing, but that only the "majority of any craft or class of employees" may do so.[20] Appellants have cited cases which hold that Congress intended employees to be given the right to retain the crafts or classes as they were formerly recognized or established by mutual agreement between employee and carrier.[21] It is sufficient, however, to say that these cases were concerned with disputes as to the craft or class to which the nature of an employee's work entitled him to belong, and not with the area which was to be considered the compass of that craft or class. These cases are based, in part, upon a section of the Act which provides:

> * * * no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, *nor shall the jurisdiction or powers of such employee organizations* [craft organizations] *be regarded as in any way limited or defined by the provisions of this Act* [italics supplied]

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[20] It is to be noted that, in the Act, the term "representative" is always used in the singular when associated with the phrase "craft or class," but in the plural when associated with the word "employees". The two terms, "craft or class" and "employees", are not interchangeable. The employees of a railroad include many crafts or classes. Section 2, Ninth, says, in effect, that when *employees* are involved in *a dispute*, the Board shall select the *representatives* thereof. We submit that there is no inconsistency in the word "dispute" appearing in the singular, in this instance, as it may be that more than one craft will be represented by the employees involved in that dispute, thus necessitating the designation of mu-tiple representatives.

[21] Brotherhood of Railroad Trainmen *v.* National Mediation Board, cited *supra* note 19; Order of Railway Conductors of America *v.* National Mediation Board, 72 App. D. C. 299, 113 F. (2d) 531; Brotherhood of Railway and Steamship Clerks, etc., *v.* Nashville, C. & St. L. Ry., 94 F. (2d) 97 (C. C. A. 6th).

[22] Section 1, Fifth.

While this section may give some stability to existing craft or class arrangements, it does not do so to the extent of allowing the maintenance of a particular representation ar- [fol. 189] rangement which encompasses less than the whole of an established and recognized craft or class. There was no dispute here as to what constituted a yardman, or whether any particular group were or were not yardmen, or whether any particular group were or were not entitled to vote along with yardmen; therefore, the language of the cases cited by appellants is not applicable. We have found no decision echoing this language where a controversy over the scope of the bargaining unit existed, when it was agreed that all of the employees involved were members of the same craft. We therefore deny that Congress intended any geographical or divisional connotation to be given to the term "craft or class"; it was intended only in the occupational or functional sense and not in the fractional, divisional, or regional sense.

Excepting only situations similar to that presented in *Brotherhood of Railroad Trainmen* v. *National Mediation Board*,[23] decided this day, our underlying premise is that the term "craft" has an accepted and established meaning both in the popular understanding and in labor circles. It was left undefined by the Act, as was its disjunctive partner. While "craft" and "class" may not be synonymous as used in the Act, this could only be because "class" may be more comprehensive.

The term "craft" has been defined as "Those engaged in any trade, taken collectively". The term "class" has been defined as "A group of individuals ranked together as possessing common characteristics or as having the same status".[24] The author of the bill, Mr. Eastman, explained the term "craft or class", as he had used it, to the Congressional Committee, as "*all* of the employees of the carrier, *no matter in what shop they were located, who did that particular kind of work*." [25] [Italics supplied] It follows that merely because one, or a number, is kept geographically

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[23] —— U. S. App. D. C. ——, —— F. (2d) —— (No. 8311, decided February 15, 1943).

[24] See Webster's New International Dictionary (2d ed., 1939); 10 Words and Phrases (Perm. ed.) 322; 7 *id.* at 427 (compare "class" as used in the law of will).

[25] See note 30 *infra*.

remote or separated from the group, that fact does not make him any the less a member of that craft or class. Neither may a craft or class be considered as non-existent or artifically dissected, because its members were originally organized for a limited purpose, *i. e.*, representation, by geographical segments.

Admittedly, an arbitary division of a craft into geographical groups will sustain the use of the word "class", in the broadest sense of the word, in describing one of the resulting segments. Thus, Craft X might be considered as partitioned into two classes, *i. e.*, *Class I*—Craft X, north of the river, and *Class II*—Craft X, south of the river; but we insist that such a partitional arrangement could not create two *crafts*. Thus, if "class", as used in the Act, is to be considered in this broad, unrestricted sense, and not as qualified or tempered by its association with the word "craft", the Board would be empowered, in its discretion, to divide a craft into the most minute regional units, because—upon some pretext or other—each might still be designated as a "class." We feel that the implications of any such interpretation run counter to the language and purpose of the Act. We need only point to the plain, clear, and unequivocal manner of expression [fol. 190] used by Congress when it indeed intended so to empower an administrative agency with such broad discretion. We present, by way of contrast, the delegation of authority to the National Labor Relations Board in this regard:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees *in a unit appropriate for such purposes*, shall be the exclusive representatives of all the employees *in such unit* * * * [N. B., the absence of the terms "craft" or "class".]
>
> The Board shall decide in each case whether * * * *the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.*[26] [Italics supplied]

It is urged that by this specific and detailed language, Congress intended no more than is contained in the simple

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[26]Act of July 5, 1935, 49 Stat. 453, c. 372, § 9; 29 U. S. C. A. § 159.

phrase "craft or class" as used in the Railway Labor Act. We cannot agree. We think it manifest, from a comparison of the related clauses of the two Acts, that the National Mediation Board does not enjoy that wide latitude of discretion which Congress has granted to the National Labor Relations Board. The Railway Labor Act deals only in terms of "craft or class"; no other *unit* for collective bargaining is considered. There is no authorization to the Board to subdivide or sectionalize, or to designate a representative upon any other basis than the craft or class unit. The Board has found the Railroad Company to be a single carrier. None of the yardmen here is involved or affected by any agreement altering craft or class lines.[27] Under these circumstances, it necessarily follows that all of the employees of the Railroad Company engaged in the same character of work are members of the same craft or class. What possible purpose or authority is vested in the Board to designate a combination of lines a single carrier except for just this purpose? The sole function of the Board in this regard is to provide employees with representation as authorized by Congress. When it finds a single carrier, it does so only to determine the scope of the bargaining unit. The Board has in several instances ruled that it had no discretionary powers to divide employees for election purposes along regional lines.[28] It acknowledges, and the record indicates, that it has in several cases acquiesced in divisional representation where the question of a single carrier was not raised or where *all* the organizations involved agreed to the regional representation. Where, however, the question was raised, or where there existed a single dissident to the partitional arrangement, the Board insists that it has considered that it had no discretion and that it has decided that it was bound to certify a single representative for the entire system. We think the Board's interpretation is consistent with the

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[27]Brotherhood of Railroad Trainmen *v.* National Mediation Board, cited *supra* note 23; Brotherhood of Railroad Trainmen *v.* National Mediation Board, 66 App. D. C. 375, 88 F. (2d) 757; Brotherhood of Railway and Steamship Clerks, etc., *v.* Nashville, C. & St. L. Ry., 94 F. (2d) 97 (C. C. A. 6th).

[28]See notes 14 and 15 *supra*.

[fol. 191] intent of Congress.[29] In any event we are not here concerned with a case in which the Board has allowed a partitional arrangement. All of the employees here involved are unquestionably yardmen, all are considered and treated as yardmen, all have aligned themselves (as far as the record indicates) exclusively with yardmen organizations, none has aligned himself with any other craft for bargaining purposes. The Act provides that on a carrier, the majority of the employees of a craft or class *shall have the right* to designate the organization which shall represent the *entire* craft or class on that carrier. The Board, therefore, has no discretion to divide the craft or class when one of the employees' representatives *insists* that the terms of the Act be carried into effect. To do otherwise would be to *deny* the majority of the craft or class *a right* expressly granted to them by the Act. The Board has operated under this policy since the 1934 amendments. Even if the question of the lack of power in the Board to divide a single carrier was "nicely balanced" (which we firmly believe it not to be), the long standing administrative interpretation and practice would upset that

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[29]In May, 1936, two years after the 1934 amendments, the so-called "Washington Agreement" was entered into by the Railroad Company and many other carriers, on the one hand, and the Switchmen's Union and many other organizations representing railroad employees, on the other. The Agreement contained certain provisions for the protection of employees who would be displaced by any other consolidation, merger, or unification of the signatory carriers. The Railroad Company was at that time considered so unified that it was therein designated as a single carrier for the purposes of the Agreement, *i. e.*, any further coordination of the facilities of the component lines of the Railroad Company was not to be subject to the terms of the Agreement. All of the leased lines of the Railroad Company were therein termed "Properties and Operations included in the authorization *as part of, and to be considered as part of*" the Railroad Company. [Italics supplied.] In the Agreement, over one hundred carriers and over twenty employee organizations (including appellants) treated the Railroad Company as a single carrier for this important purpose.

balance in the direction of validity.[30] It may be worthy of note that Congress amended the Act in 1940 in an irrelevant respect, but did nothing to affect this practice.

There are other evidences of Congressional intent which reinforce the position we take. The 1934 amendments to the Act were originally prepared and explained to the Congressional Committees by their author, Mr. Eastman, then Federal Coordinator of Transportation. On answer to questions by a member of the House Committee on Interstate and Foreign Commerce, he testified upon this precise point, saying that the majority of any class or craft of employees should have the right to determine the bargaining agent:

> Mr. Huddleston. For illustration, let us take the case, we will say, of the machinists at a given shop when there are other machinists employed at other shops. Would these machinists at that particular shop be able to get together under this sentence and bargain with their employer?
>
> Commissioner Eastman. Well, my understanding of the way in which the words "craft" or "class" have been defined in the past, is that *they would cover the entire service of any particular carrier.* That is, it would not be a class of employees, to pick out those that did work in a particular shop, but it would be *all of the employees of the carrier, no matter in what shop* [fol. 192] *they were located, who did that particular kind of work.*
>
> Mr. Huddleston. For that *particular employer?*
>
> Commissioner Eastman. Yes, for that *particular employer.*[31] [Italics supplied]

Mr. M. W. Clement, chairman of the committee of the railroads designated to deal with the proposed amendments to the Act, opposed the majority rule provisions because he apparently thought that the craft or class unit was to be carrier wide. He said that the Act as drafted (and finally passed) would permit the employees in one division or territory of greater employee density, working under agree-

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[30] Armstrong Co. *v.* Nu-Enamel Corp., 305 U. S. 315, 329-31, *rehearing denied*, 305 U. S. 675.

[31] Hearings before Committee on Interstate and Foreign Commerce on H. R. 7650, 73d Cong., 2d Sess. (1934) 57.

ment with one organization, to upset the will of the majority of the employees in another territory, of lesser employee density, who were working under agreement with another organization. He urged but was unable to persuade, the Interstate and Foreign Commerce Committee of the House to add the following proviso to prevent this result:[32]

> Provided, that only each class or craft *embraced in any existing agreement* shall be the employees to be considered to determine the majority of such employees for the purposes of representation. [Italics supplied]

To the same end, Mr. Clement attempted to persuade the Senate Committee on Interstate Commerce to amend Section 2, Ninth, as follows, by adding the italicized words and omitting the words enclosed in brackets:[33]

> If any dispute shall arise between a carrier's employees *or a group thereof* as to who are the representatives of such employees *or a group thereof* * * *, it shall be the duty of the Mediation Board * * * (etc.) * * * Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the [craft or class] *such employees or group thereof* for the purposes of this Act. * * *

John G. Walber, Vice President of Personnel of the Railroad Company, also testified before the House Committee on Interstate and Foreign Commerce. He agreed with Mr. Clement's interpretation and expressed his objections by an illustration which is indeed interesting:

> A local situation on the New York Central will illustrate my point. On what *was* the Lake Shore & Michigan Southern there are agreements with the Switchmen's Union who represent the men in certain yards, and the Brotherhood of Railroad Trainmen who represent the yardmen in other yards. This condition has existed for 30 years or more. There are no complications. The yards are separate and distinct from each other, and the seniority of switchmen is confined to the particular

[32] *Id.* at 126, 128.

[33] Hearings before Committee on Interstate Commerce on S. 3266, 73d Cong., 2d Sess. (1934) 65.

> [fol. 193] yard. *However, if the proposed amendments* [1934 amendments to the Railway Labor Act] *are adopted, the men would have a perfect right to reopen the question of representation*, and the management would be faced with numerous questions under the law as possible interference with the jurisdiction claimed by the organizations. * * *[34] [Italics supplied]

The situation which Mr. Clement and Mr. Walber sought to prevent is presented by the case at bar. The amendments and alterations proposed by these gentlemen were not adopted by the Committees in the bill as reported, nor contained in the bill as finally passed. The bill was enacted in the form approved by Mr. Eastman. Accordingly, we think that the interpretation given to the bill before the Committees, concurred in by both those favoring it and those opposing it, is a persuasive indication of the legislative intent.

It is doubtlessly arguable that divisional autonomy will afford a larger number of the 6,087 yardmen the representative of their choice. If each yard were voted separately, however, more yet of the yardmen would be accommodated, and if each section of each yard were given a separate representation, still more would have their choice, and so on, until it would be possible to make the units minute enough to give all 6,087 the representative that they wished. However, this is not the purpose or design of the Act. The Act was created to furnish a procedure whereby the employees of a particular craft or class could attain a representation by the organization which the *majority* of that craft or class desired. The larger the number in the class, the more possible dissidents. The larger the class, however, perhaps the more desirable that the employer be able to deal with a single representative, and the more necessary a single contract for effective collective bargaining.

The evidence convincingly demonstrates the integral character of the New York Central Railroad Company. It was within the discretion of the Board to consider the Railroad Company a single carrier under these circumstances. Congress has seen fit to give the Board this power. A

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[34] Hearings before Committee on Interstate and Foreign Commerce on H. R. 7650, 73d Cong., 2d Sess. (1934) 155.

majority of the yardmen employed by that carrier have demanded that they be given the right to appoint the representative for their craft. Congress has expressly given those employees this right.

The argument was made to the Congressional Committees that the precise language now under consideration would bring possible repercussion in railway labor relations. Specific amendments were proposed which would have allowed the division of a craft or class. Congress was not persuaded that the unification process was not in the best interest of employees and carriers. It is for Congress to determine policy. Our province is to keep the Board within the confines of that policy. We are of the opinion that the Board correctly determined it had no discretion to deny the request of a majority of the yardmen employed by the Railroad Company to appoint a representative for their craft.

Affirmed.

[fol. 194] DISSENTING OPINION

RUTLEDGE, J. I dissent. The majority rightly conclude, I think, that the New York Central Railroad Company should be considered a single carrier for purposes of collective bargaining under the National Railway Labor Act. But I do not think it follows from that fact or the statute's provisions that the Board was required to find, as a matter of law, that all yardmen employed by the company constitute a single unit for this purpose. The important issue, as I view the case, is, how shall it be determined, under the Act, what is a "craft or class" of a carrier's employees for collective bargaining.

Broadly stated, there are three possible answers: (1) that the Act had effect to "freeze" railway labor in bargaining units existing, under contract or agreement, when it became effective; (2) that it had the opposite effect, that is, to throw out all existing units less than carrier-wide in scope and require substitution in all cases of carrier-wide craft units; and (3) that the Mediation Board was empowered, when a representation dispute arises to determine by election or other appropriate means not only who shall be the

representative, but also by what units the employees shall be represented if that likewise is in dispute.[1]

In effect, though not in exact form of statement, the first is what the Switchmen advocate. The second is urged by the Brotherhood and accepted by the Board, the District Court and the majority here. In my view, neither is consistent with the terms, purposes and policies of the statute. The consequences, in each case, forbid its acceptance.

The first is too static; the second, too violently disruptive of existing arrangements. The former freezes railway labor in the contractual mold of 1934. The latter disrupts all such arrangements as a matter of law, except as carrier-wide crafts already had been established or in other cases where all of a carrier's employees doing similar work agree to representation by lesser units. I agree with the majority's rejection of the first view and their reasons for doing so, except in so far as they require acceptance of the second. But I think Congress was as far from commanding that all less than carrier-wide units be ousted as it was from concreting all units in the contract mold of 1934.

The view that ouster is required would go far to destroy, rather than to promote, the peace in labor relations and the uninterrupted service of the carriers which were the statute's declared and primary objects. Section 1a. It makes the Act an invitation and an instrument for creating labor strife, especially in stirring up jurisdictional disputes. It gives this weapon to, and throws the whole weight of the legislation in favor of, the big unions as against the smaller ones. All that is needed for ouster of the latter is to cause some employee to question or "dispute" their right to act as representative, which a large union can always do. From that point on the ouster is almost automatic. The result of the election is, in these circumstances, a foregone conclusion. The Board becomes merely an election judge, having in effect a ministerial and often only a perfunctory function. This is but a policy of compulsory liquidation of the smaller bargaining units. I do not believe

[1] A fourth alternative, somewhat akin to the first, is hardly plausible, that the purpose was to leave entirely to the employees, to work out wholly through exercise of their economic sanctions, the definition or constitution of the voting unit.

Congress intended to adopt it. Nor do the terms of the statute comport with such an intention.

The majority reach the opposite view largely on two bases. The first is by reading into the statute a definition of "craft or class" as meaning "carrier-wide craft." This [fol. 195] is chiefly by inference from Section 2, Fourth, and Section 2, Ninth. The second basis is support for this inference found in the legislative history, particularly in the testimony of Joseph B. Eastman, then Federal Coordinator of Transportation and reputedly author of the 1934 amendments. Section 2, Fourth, quoted in the majority's opinion, with its use of the singular number in the last quoted sentence, is regarded as importing into the statute the geographic definition of "craft or class" as being "carrier-wide craft." One sentence of Section 2, Ninth, lends itself to similar grammatical emphasis: "Upon receipt of such certification *the carrier* shall treat with *the representative* so certified as *the representative* of the *craft or class* for the purposes of this act." (Italics supplied)

The difficulty with this view is that neither Section 2, Fourth, nor the quoted sentence from Section 2, Ninth, purports or was intended to define "craft or class" in any way, functionally or geographically. Neither provides for, but each assumes a previous, determination of the craft or class. Given that, Section 2, Fourth, confers on the majority the right to choose the representative, which of necessity must be singular, while the quoted sentence of Section 2, Ninth, requires the carrier to treat with the representative so chosen.

That the statute contemplated treating with only one representative for one unit is clear. And this sufficiently explains the use of the singular number both in Section 2, Fourth, and in the sentence quoted from Section 2, Ninth. But that either contemplated only one unit for all of a carrier's employees doing the same kind of work does not follow from the language of either section.

Thus, with reference to the sentence quoted above, the preceding and more important sentence is cast in the singular as to the carrier, but uses the plural in referring to "representatives," "certify * * * the name *or names* of the *individuals* or *organizations* that have been designated and authorized to represent the employees involved in *the dispute*." (N. B., not "disputes." Italics added) By giv-

ing this sentence a corresponding emphasis upon the plural number, the conclusion could be drawn that the statute requires less than carrier-wide units to be designated in all cases. So also the succeeding sentences in Section 2, Ninth, as will appear, rebut both this and the contrary inference of the majority.

Apart from grammar, neither Section 2, Fourth, nor Section 2, Ninth, was intended to supply a definition of "craft or class." They do not purport to do so. Nor does the Act. Its language may be searched from beginning to end without discovery of such a definition. This is significant in view of two facts. One is that the statute is not lacking in definition of terms Congress intended to define. "Carrier," "representative," and other basic terms are defined specifically. The other is that "craft or class" is no less basic or important. It is one of the fundamental conceptions used throughout the Act. Yet there is no semblance of specific definition. Had Congress intended to define the term, and to do so as the majority say was implied, it had only to use the simple and obvious language "carrier-wide craft." It used neither these nor any comparable words. On the contrary, it avoided making any definition of the voting or bargaining unit, and did so intentionally, deliberately and as a matter of policy. The omission was not by oversight or inadvertence.[1] There were reasons, and compelling ones, [fol. 196] for making it. This appeals, not only from the total absence of specific definite terms in the Act, but also from the legislative history and especially from the testimony given by Mr. Eastman, set forth in the margin.[2]

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[2] "Commissioner Eastman * * * Now, it is one of the curses of the labor world at the present time that there are so many of those unfortunate jurisdictional questions. They cause trouble all along the line, and unnecessary trouble, and it seems to me that it is highly desirable to have some neutral agency, tribunal, which is impartial and which can settle these questions, and that is what is undertaken to be done here.

"Mr. Wolverton. I desire to know whether your amendment includes a definition of craft or class?

"Commissioner Eastman. No. We thought of that, as to whether or not it was necessary to define craft or class,

[fol. 197] The avowed object, in his view, was to leave out any definition of craft or class, and for two reasons. The first was because, generally speaking, such a definition was regarded as unnecessary. This, in turn, was for the reason that crafts or classes had become widely and definitely crystallized in railroad labor. Hence, in Mr. Eastman's words, "I think there would be no difficulty in determining what is a craft or class of employees." In other words, there was no general necessity for defining craft or class because that term had been defined already

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but those are words which have been used in labor parlance for a very long time, and I think there would be no difficulty in determining what is a craft or class of employees.

"Mr. Wolverton. You do not think that without definition they might create disputes between the different classes of employees as to the jurisdiction of each?

"Commissioner Eastman. No; and if there are any disputes I think that that matter is sufficiently covered by the provisions of the ninth paragraph, which provides for the settlement of such disputes, or rather provides the tribunal which shall have power to consider and determine such disputes.

"Mr. Wolverton. You do not think it is necessary then to define the craft in any specific way?

"Commissioner Eastman. No; I do not think it necessary.

. . . . . .

"Mr. Huddleston. How would we resolve an issue where there was a conflict of jurisdiction as to classes and crafts, such, for illustration, as comes up in the classification of employees. We have had some pretty bitter disputes, we will say, between the carpenters and the sheet-metal workers over who should put in metal window frames. That is just an illustration of what sometimes happens, and the trouble has been that nobody could say whether the man doing that work was a carpenter or a sheet-metal worker. What would you do with a situation such as that under this bill?

"Commissioner Eastman. It is the intent that that would be handled under the paragraph ninth that I have discussed.

"Mr. Huddleston. That issue then would be decided by the Board of Mediation?

by the employees through self-organization. The existing class structure, not one revolutionized by liquidating it and substituting carrier-wide units, supplied the definition and part of the reason for refusing to make an attempt at specific definition in the Act itself. No doubt also the very difficulty of framing a definition which would reflect the existing structure or be acceptable to the forces whose support was essential to the statute's enactment furnished additional and powerful reason for not making the effort.

"Commissioner Eastman. That is the intent; whether or not it does provide for every possible contingency, I am not sure, but that is what it was designed to do." *Hearings before Committee on Interstate and Foreign Commerce on H. R. 7650*, 73d Cong., 8d Sess. (1934) 41, 45, 57-8.

Mr. M. W. Clement, chairman of the committee of the railroads designated to deal with the proposed amendments (of 1934), testified at the House hearings:

"Section one, paragraph 5, of the bill distinctly states that neither the provisions of this bill nor any occupational classifications made by the Interstate Commerce Commission shall be construed in any way to define crafts, yet section 9 of this bill puts the problem of jurisdiction of crafts up to the Mediation Board, and places upon them the responsibility of determining those eligible to vote in case of disputed representations, and brings about a complication that neither railroad nor employees know where they are." *Hearings before Committee on Interstate and Foreign Commerce on H. R. 7650*, 73d Cong., 2d Sess. (1934) 131.

Rejection of the amendment proposed in 1934 by Mr. Clement to remove any doubt concerning the matter was not, in the face of all this evidence that the omission to define "craft or class" was intentional, a backhanded adoption of such a definition. It merely reflected the continued unwillingness of the parties to insert such a definition or their inability to agree upon one mutually satisfactory. It seems fair to assume that if any such definition had been included, the Act would have failed of passage. It was fear that the language might lend itself to Mr. Eastman's stated construction which prompted the tendering of the amendment. Its rejection was not an adoption of the construction. It was rather a retention of the original and intended omission to make any sort of definition.

The matter was one better for letting sleeping dogs lie rather than stirring them up. The uncontradicted intention to refrain from defining the term is a complete contradiction of the purpose to include, either specifically or by inference from other terms, a definition which would make "craft or class" mean for all cases "carrier-wide craft."

However, there was one outstanding situation, among others, in which the problem of defining the craft or class could not be ignored completely or left to be determined by reference to the existing structure of labor organization. That was the case of the jurisdictional dispute, characterized by Mr. Eastman as "one of the curses of the labor world."[3] The statute anticipated the difficulty. Provision was made in Section, Ninth, for taking care of it. At the House Committee hearings Representative Huddleston inquired of Mr. Eastman: "That issue then would be decided by the Board of Mediation?" The witness replied: "That is the intent * * * that is what it was designed to do."[4] In other words, in cases of jurisdictional disputes, as in others wherein the scope of the "craft or class" might be in issue, the Board, not the statute, was to decide upon or define the unit. Mr. Eastman's reference, in this portion of his testimony, obviously was not to Section 2, Fourth, nor to the sentence above quoted from Section 2, Ninth. It was rather to the specific provision of the latter section which empowers the Board to "designate who may participate in the election" or delegate this function to "a committee of three neutral persons." This is the only provision in the entire statute which specifically approaches the problem of defining the voting, and thus the bargaining unit. Consistently with the statute's avowed purpose to leave to the employees the matter of their own organization as far as possible, and with the corresponding omission to define voting or bargaining units, the provision itself makes no such definition but refers that matter to the Board's judgment whenever it must be faced to avoid a breakdown in the functioning of the Act.

Considering the provisions of Section 2, Ninth, in conjunction with this portion of Mr. Eastman's testimony, it

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[3] See the preceding note.

[4] *Ibid.*

seems clear the statutory purpose was: (1) not to define but rather deliberately to omit definition of "craft or class," since generally the crystallized status of labor organization would furnish this definition; (2) that, in the excep- [fol. 198] tional cases in which the issue might arise, the Mediation Board would determine the voting, and thus the bargaining, unit under the power conferred by Section 2, Ninth, and as its judgment based upon the evidence in the particular case, rather than any mandate in the statute itself, might require.

This view derives added strength from the provision authorizing the Board to delegate the functions of holding the election and designating who may participate to a neutral committee. Testimony at the Congressional hearings discloses the reason and purpose of the delegation.[5] These were to enable the Board to escape the onus which might attach to its own discharging of these functions. This arises primarily, if at all, not from merely conducting an election for a predetermined unit, but from determining who may participate. That was the rub which Congress intended the Board to avoid, if it should so desire. In other words, it was clearly contemplated that the Board would be confronted with a highly delicate decision in designating who might vote, which comes down in practical effect to defining the units to be represented, whenever the representation dispute involves this factor.

How this could be true, and why it was necessary to make provision for the Board to relieve itself by delegating the function to others, are difficult to understand, if Section 2, Ninth, already had relieved it as a matter of law by requiring it to designate carrier-wide crafts in all cases. Obviously Mr. Eastman reconciled this inconsis-

[5] The Senate Committee report states: "This determination of what employees shall be allowed to vote is one of the most controversial subjects in the settlement of disputes. Your committee amended the bill so that if the Mediation Board found it might arouse antipathy on the part of the carriers or the employees in deciding questions of this kind, it could create a neutral committee to do that work, so its own usefulness of settling disputes that might arise thereafter might not be impaired." *Hearings before the Senate Committee on Interstate Commerce on S. 3266*, 73d Cong., 2d Sess. (1934) 3.

tency, as do the majority, by differentiating functional conflicts and geographic or regional conflicts. Only by resort to this distinction can his testimony be regarded as not involving fundamental inconsistency. If the distinction is accepted, the conflict dissolves. In other words, he thought that the statute designedly omitted to make functional definition of "craft or class" along craft lines, but embodied a uniform and invariable definition along geographical or regional lines.

This is the crux of the matter. Clearly the statute left the matter of functional definition, along craft lines, to the Board (or, in its stead, to a neutral committee), when that issue arises in a representation dispute. That seems to be admitted by all. But I cannot agree that it made different provision for definition along geographic lines. This seems clear both from the terms of the Act and from the reasons which required reference of the matter of defining the voting units to the Board. There was no more reason for empowering the Board to determine a functional jurisdictional dispute than a geographic or regional one. There is nothing in the language of the statute which indicates either intent or reason to withdraw one more than the other from the Board's authority. The absence of definitive provision is both geographic and functional—it is total. The language of the Act places no geographic or regional requirement or limitation upon the Board's power, except that the unit must be confined to a carrier's employees. It cannot be greater than that, so as to include others. The reasons applying in the one case, to support the omission, apply equally in the other. If the existing [fol. 199] structure of railway labor organization made such definition generally unnecessary in the case of overlapping craft lines, it had like effect as to overlapping geographic lines. The one offers as much possibility for stirring up jurisdictional disputes as the other. The one was as widely and definitely crystallized as the other. Neither would bring more onus to the Board from deciding the issue than the other. Every reason which dictated definition of the one, or omission to define it, did so as to the other. In short, the distinction, considered in the light of the statute's total omission of definitive terms, functional and geographic, and of the equality of application of the reasons, for making the omission, to both types of issue, is untenable, notwithstanding its distinguished sponsorship.

In that view, it is impossible to reconcile the admitted purpose to omit definition of "craft or class" from the statute's terms and the power it confers on the Board to make this definition when confronted with the necessity, on the one hand, with the view, on the other, that the Act itself defines the voting unit and does so for all cases as a "carrier-wide craft." The situation is one in which the silence of the statute not only is eloquent, but is compelling.

Finally, this view of the Board's function is supported by the declared policy of the Act, set forth in other provisions, which furnishes not an ironclad mold but the necessary standard to guide its administrative discretion or judgment. This policy is to leave to the employees themselves, so far as is possible, the formation of their own units. It is declared in the proviso to Section 1, Fifth,[6] and in my opinion this was not repealed by implication through adoption of the 1934 amendments. It is built upon the history of railway labor organization in the nation. It is reflected in the intentional omission to define "craft or class." It was, without doubt, an essential condition for securing the support necessary for enactment of the legislation. It has been recognized judicially by this court[7] and by others.[8] The administrative practice of the Board has followed it, both in designating representatives for less than carrier-wide units when there has been no disagree-

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[6] "Provided, however, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission."

[7] *Cf.* Brotherhood of Railroad Trainmen v. National Mediation Board, 66 App. D. C. 375, 88 F. (2d) 757 (1936); 72 App. D. C. 299, 113 F. (2d) 531 (1940).
Order of Railway Conductors v. National Mediation Board.

[8] Brotherhood of Railway and Steamship Clerks v. Nashville, C. & St. L. Ry., 94 F. (2d) 97 (C. C. A. 6th, 1937).

ment as to this [9] and in using its powers of persuasion and [fol. 200] influence to secure agreement among the disputing employees concerning the unit, whether carrier-wide or less extensive.[10] In other words, as appellants say in their brief, the underlying principle written into the Act was the right of self-organization. I think that was just as true regionally as it was with reference to the fixing of craft lines.

But it does not follow that this principle is unlimited. Self-organization does not work, at any rate consistently with the basic purposes of the legislation, when two groups lock horn in death struggle over a no man's land or one invades and seeks to conquer the territory of another. When self-organization leads to war, the limit of the right has been passed. So long as the employees can organize themselves and do so, without entrenching upon each other's or the public domain, the Act preserves their right and the Board has respected it. That it has done so, in my opinion, is not because it has closed its eyes to the policy of the Act for the reason that its jurisdiction has

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[9] It appears to be conceded that the Board's uniform practice is to certify less than carrier-wide unit representatives when the disputes presents no issue as to the regional or geographic scope of the unit, and the Board's findings in this case set forth five such certifications. On the other hand, when the dispute presents such an issue, the uniform practice has been to regard the unit as carrier-wide, pursuant to the position taken by the Board in its First Annual Report. Thus, it seems the Board has followed two diametrically opposite policies in administration of the Act, one effective when there is no issue presented as to the area of the craft, the other when such an issue is made. If the Act as is contended, requires a uniform designation of carrier-wide units as a matter of law, when there is a representation dispute, it is difficult to understand how the so-called "agreement" of the parties, or their failure to raise this phase of the issue, can confer upon the Board authority to certify a representative for a unit not contemplated by its terms or policy. *Cf.* text *infra* at note 11.

[10] As the record shows is the Board's usual practice, followed in this case.

not been invoked, as would be true if the statute requires carrier wide units as a matter of law; but is rather because, to this extent, it has observed and followed both the letter and the policy of the law.[11] The statute obviously was not intended to prescribe two conflicting policies, one for application when the persons affected agree, the other to be applied when they disagree. So to construe it would turn the policy to be applied upon the factor of agreement alone, which of course only would invite disagreement.

But when the limit has been reached, and the employees cannot agree, some power must provide the decision as to the appropriate unit, unless the Act is to break down and its purposes be defeated. Those consequences cannot be avoided by leaving things forever as they have been set by the arrangements, contractual or otherwise, made in and for another day long gone. There must be some room for change and adjustment, but it need not be, and the law does not require it to be, in all cases a total disruption of existing arrangements.

Between these two extremes the statute has drawn a compromise and, in my opinion, the only workable one. This is, in effect, that the Board must decide, when a dispute concerning representation presents the issue, "who may participate in the election," that is, what is the appropriate or proper unit of which the sense is to be taken by the majority vote (or other means) the Act requires. That decision is not to be made arbitrarily, or uniformly in all cases without regard to the varying conditions presented. It is to be made in the light of various factors, as shown by the evidence presented to the Board, including the size of the carrier, the nature of the preëxisting or prevailing arrangements, the disruption of harmonious relations with the employer which the proposed change, or the failure to make it, might bring. Approached in this manner, the Board's decision might be for a carrier-wide craft or class or for one less extensive, depending upon the case made. Conceivably in some cases decision either way might be sustained. But it all events it is one which should be made by the exercise of the Board's judgment, not as an automatic reflection of a statutory requirement of carrier-wide crafts.

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[11] *Cf.*, however, note 9 *supra*.

[fol. 201] Enough has been said, I think, to show the fallacy as well as the dangers of accepting either of the two extreme views which have been put forward in this case. Because each seems to me to involve dangers as great as the other and like misconceptions of the statute's language and policy, I have been unable to accept the one or the other. In my opinion the Board, when it decided as a matter of law that the statute requires carrier-wide crafts as the voting unit, whenever the dispute raises that question, failed to exercise the judgment which the statute calls into play.

For this reason the judgment should be reversed and the cause remanded to the District Court, with instructions to vacate the Board's order.

[fol. 202] IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

SWITCHMEN'S UNION OF NORTH AMERICA et al., Appellants,

vs.

NATIONAL MEDIATION BOARD et al., Appellees

Appeal from the District Court of the United States for the District of Columbia

JUDGMENT—February 15, 1943

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court, in this cause, be and the same is hereby, affirmed with costs.

Per Mr. Justice Vinson.

Dated February 15, 1943.

Dissenting opinion by Mr. Justice Rutledge.

[fol. 203] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD—Filed February 19, 1943

The Clerk will please prepare a certified transcript of proceedings in the above-entitled cause for use in connection with the Petition for Writ of Certiorari in the Supreme Court of the United States, and include therein the following:

1. Consolidated Appendix.
2. Minute Entry of Argument.
3. Opinion of the Court.
4. Dissenting Opinion.
5. This Designation.
6. Clerk's Certificate.

Donald R. Richberg, Rufus G. Poole, Attorneys for Appellants, 815 15th Street, N. W., Washington, D. C.

I hereby certify that copies of the foregoing Designation of Record in the above-entitled cause were mailed, postage prepaid, this 19th day of February 1943 to the following attorneys for appellees:

[fol. 204] Robert L. Stern, Esquire; John H. D. Wigger, Esquire, Department of Justice, Washington, D. C.

Alfred M. Savage, Esquire, 521 Title Building, Baltimore, Maryland.

Alfred L. Bennett, Esquire, Denrike Building, 1010 Vermont Avenue, Washington, D. C.

A. Rea Williams, Esquire, 104 Investment Building, Washington, D. C.

Rufus G. Poole, Attorney for Appellants, 815 15th Street, N. W., Washington, D. C.

[fol. 205] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 206] IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

SWITCHMEN'S UNION OF NORTH AMERICA, et al., Appellants,

v.

NATIONAL MEDIATION BOARD, et al., Appellees

ORDER OF SUBSTITUTION—April 7, 1943

On consideration of appellants' motion filed herein March 26, 1943, to substitute parties herein, It is

Ordered by the Court that William M. Leiserson and H. H. Schwartz, present members of the National Mediation Board be substituted as appellees in the place and stead of David J. Lewis and Otto S. Beyer, retired.

Dated April 7, 1943.

Per Curiam.

[fol. 207] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO RECORD

It is stipulated and agreed by counsel for the parties in the above-entitled cause that:

(1) The petition for certiorari in said cause may be considered on the record printed in the Consolidated Appendix for the United States Court of Appeals for the District of Columbia, supplemented by the proceedings and opinions of that Court.

(2) The original transcript of record filed herein shall be transmitted to the Clerk of the Supreme Court of the United States for use in connection with the petition.

[fol. 208] (3) If a writ of certiorari is granted herein, there shall be printed such parts of the record as are contained in the said Consolidated Appendix and the proceed-

ings and opinions in the United States Court of Appeals for the District of Columbia.

Donald R. Richberg, Rufus G. Poole, Attorneys for Petitioners, 815 15th Street, N. W., Washington, D. C.

Charles Fahy, Solicitor General; Robert L. Stern, Attorneys for National Mediation Board, Department of Justice, Washington, D. C.

Bernard M. Savage, by H. B., 521 Title Building, Baltimore, Maryland.

Alfred L. Bennett, 1010 Vermont Avenue, Washington, D. C.; Attorneys for Brotherhood of Railroad Trainmen.

[fol. 209] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 937

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed May 24, 1943

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted. Counsel are requested to discuss in their briefs and on oral argument the following questions, so far as applicable in each case:

(1) whether resort to the declaratory judgment procedure is appropriate in the circumstances;

(2) whether any questions of the construction of the contracts involved are governed by state or by federal law;

(3) what bearing, if any, the Norris-LaGuardia Act has on the propriety of granting the relief sought;

(4) in No. 937, whether the district court had jurisdiction to review the certification of the Board.

The Solicitor General is requested to file a brief *amicus curiae*, and if he so desires to participate in the oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 47,438, U. S. Court of Appeals, District of Columbia. Term No. 48. Switchmen's Union of North America, In its own right, etc., T. C. Cashen, et al., Petitioners, vs. National Mediation Board, George A. Cook, William M. Leiserson, et al. Petition for a writ of certiorari and exhibit thereto. Filed April 16, 1943. Term No. 48 O. T. 1943.

(6807)

FILE COPY

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CHARLES ELMORE CROPLEY
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NO. 937

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

SWITCHMEN'S UNION OF NORTH AMERICA, IN its own right, etc., T. C. CASHEN, JOHN W. WOLFE and R. F. ROCKWELL, As representatives of the class of yardmen employed on the Michigan Central Railroad Company and the New York Central Railroad Company—Lines West who are members of the Switchmen's Union of North America,

Petitioners,

vs.

NATIONAL MEDIATION BOARD, GEORGE A. COOK, WILLIAM M. LEISERSON and HARRY H. SCHWARTZ, Individually and as members of the National Mediation Board, and BROTHERHOOD OF RAILROAD TRAINMEN, a voluntary unincorporated association, NEW YORK CENTRAL RAILROAD COMPANY, a New York corporation, MICHIGAN CENTRAL RAILROAD COMPANY, a Michigan corporation,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, AND BRIEF IN SUPPORT THEREOF

DONALD R. RICHBERG,
RUFUS G. POOLE,
Attorneys for Petitioners

Reasons for Granting the Writ

1. The decision of the Court of Appeals in the instant case is in conflict with the decision of the Circuit Court of Appeals for the Sixth Circuit in the case entitled *Brotherhood of Railway and Steamship Clerks, etc. v. N. C. & St. L. Ry. Co.*, 94 F. (2d) 97. It is also in conflict with decisions of the United States Court of Appeals for the District of Columbia in *B. R. T. v. National Mediation Board*, 88 F. (2d) 757, in *O. R. C. v. National Mediation Board*, 113 F. (2d) 531, and in *B. R. T. v. National Mediation Board*, No. 8311, decided by the same court the same day as the instant case.

2. The Court of Appeals has placed a new construction (by a divided court) on several of the most important provisions of the Act, thereby affecting the rights of over one million railway employees to representation by representatives of their own choosing in collective bargaining for the purpose of fixing their wages and working conditions. A final and authoritative determination of the issues presented is of vital concern to these employees and to the managements of all the railroads of the United States.

3. The Court of Appeals has, by a divided court, decided, we believe erroneously, questions of great public importance affecting and disturbing seriously the existing relations between employer and employees on substantially all railroads in the United States, and inevitably fomenting controversies between railroad labor organizations and between railroad managements and railroad labor organizations, which should be avoided so far as possible, particularly in the present time of war.

WHEREFORE, the petitioners pray that a writ of certiorari issue to review the judgment of the United

States Court of Appeals of the District of Columbia entered in this case February 15, 1943.

Respectfully submitted,

DONALD R. RICHBERG,
RUFUS G. POOLE,
Attorneys for Petitioners.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

SWITCHMEN'S UNION OF NORTH AMERICA, IN its own right, etc., T. C. CASHEN, JOHN W. WOLFE and R. F. ROCKWELL, As representatives of the class of yardmen employed on the Michigan Central Railroad Company and the New York Central Railroad Company—Lines West who are members of the Switchmen's Union of North America,

Petitioners,

vs.

NATIONAL MEDIATION BOARD, GEORGE A. COOK, WILLIAM M. LEISERSON and HARRY H. SCHWARTZ, Individually and as members of the National Mediation Board, and BROTHERHOOD OF RAILROAD TRAINMEN, a voluntary unincorporated association, NEW YORK CENTRAL RAILROAD COMPANY, a New York corporation, MICHIGAN CENTRAL RAILROAD COMPANY, a Michigan corporation,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Preliminary Statement

We refer to the foregoing petition for a citation of the opinion below, statement of grounds of jurisdiction,

citation of statute involved and a summary statement of the case.

ARGUMENT

This argument is not addressed to the merits of the case except so far as such discussion is incidental to presenting a brief argument in support of the reasons stated in the petition for granting the writ.

I

Conflict With Other Decisions

The decision of the Court of Appeals is in conflict with other decisions of this and another Court of Appeals. It has been consistently held heretofore that the underlying principle written into the Railway Labor Act was the right of self-organization. It previously held, in *B. R. T. v. National Mediation Board*, 88 F. (2d) 757:

> "The general purpose of the Labor Act was to promote peaceful and conciliatory consideration of labor disputes, and especially to secure the right of collective bargaining through a representative chosen by a majority of the employees in a particular craft or class. It is not going too far to say that the basic and underlying purpose of the Act was to insure representation *in accordance with established custom* to those employees *whose interests are involved.* But the Act leaves uncertain the precise or exact meaning of the words 'class or craft', and we think obviously for the reason that it was intended by Congress to adopt the designation of class or craft as determined by the *then current working agreement* between the Railroad and particular groups or classes of its employees: * * * (Emphasis supplied.)
>
> * * * * *
>
> " * * * we think it is obvious that how classes are to be formed and who shall compose them are matters left *to the employees themselves;* and so we think

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

NO.------

SWITCHMEN'S UNION OF NORTH AMERICA, IN its own right, etc., T. C. CASHEN, JOHN W. WOLFE and R. F. ROCKWELL, As representatives of the class of yardmen employed on the Michigan Central Railroad Company and the New York Central Railroad Company—Lines West who are members of the Switchmen's Union of North America,

Petitioners,

vs.

NATIONAL MEDIATION BOARD, GEORGE A. COOK, WILLIAM M. LEISERSON and HARRY H. SCHWARTZ, Individually and as members of the National Mediation Board, and BROTHERHOOD OF RAILROAD TRAINMEN, a voluntary unincorporated association, NEW YORK CENTRAL RAILROAD COMPANY, a New York corporation, MICHIGAN CENTRAL RAILROAD COMPANY, a Michigan corporation,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The above-named petitioners respectfully pray that a writ of certiorari issue to review the judgment of the

United States Court of Appeals for the District of Columbia entered in the above-entitled cause on February 15, 1943.

Opinion Below

The opinion of the Court of Appeals, not yet reported, appears in the printed record, pages 180-193 and the dissenting opinion by Mr. Justice Rutledge is at pages 194-201.

Jurisdiction

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U.S.C. 347).

Statute Involved

The pertinent provisions of the Railway Labor Act, as amended, (hereinafter sometimes referred to as the Act), (45 U.S.C., Par. 151 *et seq.*) are set forth in the appendix to this petition.

Statement of the Matter

This case arose out of an alleged dispute over whether the yardmen working in certain yards of the New York Central Railroad Company were legally entitled to representation by the Switchmen's Union of North America (hereinafter referred to as the Switchmen's Union), one of the petitioners, or by the Brotherhood of Railroad Trainmen (hereinafter referred to as the Brotherhood), one of the respondents. At the time the dispute was investigated by the National Mediation Board (hereinafter referred to as the Board), and for many years before, the yardmen employed on the New York Central were represented and working under agreements negotiated by either the Switchmen's Union or the Brotherhood. The Switchmen's Union was the accepted representative of yardmen in all yards on the

Michigan Central lines west of the Detroit River (including the South Bend Transfer Crews) and in all yards of the New York Central-Lines West (of Buffalo) except nine yards covered by Brotherhood contracts. The Brotherhood represented yardmen in all yards of the Michigan Central east of the Detroit River (these being in Canada), all yards of the Boston & Albany, the New York Central-Lines East (of Buffalo), the Cleveland, Cincinnati, Chicago and St. Louis (hereinafter referred to as the Big Four) and the Toledo & Ohio Central Lines. (R. 168-170) There was no question raised by the Switchmen's Union or by anyone else concerning the right of the Brotherhood to represent yardmen covered by Brotherhood contracts. (R. 40, 90, 91)

On July 2, 1940, the Brotherhood invoked the services of the Board to investigate an alleged dispute among New York Central yardmen, and claimed the right to represent all yardmen employed by the New York Central Railroad Company. The Brotherhood contended that *all* the yardmen employed by the company should be voted for the purpose of selecting a single representation. (R. 31-35)

The Switchmen's Union opposed the demand of the Brotherhood contending:

1. That no one was disputing the right of the Brotherhood to represent the yardmen covered by its contracts and that, therefore, those yardmen were not involved in any dispute over representation;

2. That there was no evidence that any specific number of yardmen covered by the Switchmen's Union contracts desired any different representation and that, therefore, there was no basis for holding an election;

3. That, in any event, only the yardmen covered by the Switchmen's Union contracts could be re-

garded as "involved" in any dispute; and that the Board was authorized only "to take a ballot of the employees involved" in a dispute. (Railway Labor Act, Sec. 2, Ninth)

The Board held, however, that, as a matter of law, it was required to vote all the employees of a single carrier working in one craft whenever a dispute arose among some of the craft workers over their representation. It held that the New York Central Railroad Company was a single carrier and that, accordingly, since a dispute had arisen over the representation of some of the yardmen employed by this carrier, *all* the yardmen must be voted in an election which would determine one representation for all such employees. (R. 31-54)

It was obvious that if the ruling of the Board were correct the Switchmen's Union could no longer represent its members, even in yards on parts of the railroad system where the overwhelming majority of the yardmen desired representation by the Switchmen's Union. The total number of yardmen employed by the New York Central Railroad Company was approximately 6,087. Disregarding the New York Central-Lines West and the Michigan Central, where a majority of the yardmen were covered by the Switchmen's Union contracts, the Brotherhood contracts covered approximately 3,653 yardmen employed on the Boston & Albany, the New York Central-Lines East, the Big Four and the Toledo & Ohio Central lines. (R. 40) It was evident, therefore, at the outset that a majority of *all* the yardmen employed by the New York Central Railroad Company would vote for the Brotherhood. But the Board decided to vote all the yardmen, and conducted an election, despite the protests of the Switchmen's Union, and certified that the Brotherhood had received a majority of the votes (as was inevitable). (R. 54-57)

Thereupon, the Switchmen's Union filed a bill of complaint (which inaugurated the present case) in the District Court of the United States for the District of Columbia, seeking, first, to enjoin the Board from holding an election and, then, by an amended complaint after the election had been held, seeking to have the action and certification of the Board annulled and set aside as being without authority and in violation of the provisions of the Act under which the Board purported to act. (R. 3-31)

The District Court dismissed the complaint on July 10, 1942, after making findings of fact and conclusions of law supporting the action of the Board. (R. 86-93) Thereupon, an appeal was taken to the United States Court of Appeals for the District of Columbia. While that appeal was pending, the District Court granted the plaintiff's motion for a preliminary injunction pending appeal.

The majority opinion of the Court of Appeals sustained the position of the Board in holding that the Act compelled the Board to vote all the employees of a craft employed by a single carrier when a dispute arose requiring an election to determine the representation of members of the craft. (R. 180-193) In his dissenting opinion, Mr. Justice Rutledge took the position that under the Act the Board had the discretion to determine whether or not all the employees of a craft must be voted whenever a dispute arose among some of the employees which required an election to determine their representation. (R. 194-201)

Thus, there are three possible constructions of the Act presented for the consideration of this Court: (1) That the Act compels the selection of a single representation by all employees of a particular craft who are employed by a single carrier (the majority opinion of the Court of Appeals); (2) that the Act gives the Board

a discretion to determine the appropriate or proper unit of employees who may participate in the election (the dissenting opinion of the Court of Appeals); (3) that the Act authorizes the Board to allow only those employees who are "involved in the dispute" to participate in the election, and that the Board cannot arbitrarily include as "employees involved in the dispute" employees who are not, in fact, involved in any dispute over their representation (the contention of petitioners).

A final and authoritative construction of the statute is urgently needed because long before, and ever since, the Act was passed, railroad workers of the same craft have been represented by different organizations in different geographical and operating divisions of railroad systems; and this new requirement that no organization may continue to represent a portion of a railroad unless its members comprise a majority of all employees of the craft employed by one railroad system, or "single operating carrier", will bring about the destruction of long-established contracts and relationships between carriers and employee organizations and innumerable jurisdictional conflicts injurious alike to railroad management and railroad labor.

In the present case, Mr. John J. Walber, Vice President of the New York Central System and a veteran authority on labor relations, testified that the agreements on file with the Board showed that "there cannot be any dispute as to representation with the Brotherhood of Railroad Trainmen on the Boston & Albany Railroad, the New York Central Railroad (Buffalo and east) and the C. C. C. & St. L. Railway (Big Four) as the B.R.T. holds the agreements on these properties." (R. 170) He also stated that "to have a vote include portions of the railroad where the Brotherhood of Railroad Trainmen is recognized, and on which there

cannot possibly be any dispute, would violate a continuous history of more than thirty years' duration in making agreements covering these particular classes of employees." (R. 172) He testified concerning his knowledge of the resentment of the employees over the disregard of minority rights, and said, "It is that mental attitude on the part of these employees that we anticipate is going to make a world of trouble for us if there is any change in this situation." (R. 176)

Questions Presented

1. Is the Board *required* by the Act to hold that, as a matter of law, all the employees of a single craft employed by a single operating carrier must be voted to determine a single representation, even in situations where, as a matter of fact, there is no dispute over the representation of a large majority of these employees?

2. Does the Act authorize the Board to exercise a discretion to determine what employees of a single craft employed by a single carrier are involved in a dispute over representation and may participate in an election to determine that representation; or does the Act deny to the Board the authority to exercise any discretion?

3. Does the Act authorize or permit the Board, in the exercise of its discretion, to hold that employees who have no dispute in fact over their representation under existing contracts, are "involved" in a dispute as to who shall represent other employees under other existing contracts?

4. Does the Act require the Board to hold that a carrier means a single operating carrier and that all the employees of one craft of a single operating carrier must be voted if a dispute arises over a representation of employees of a subsidiary carrier or a portion of a carrier?

that by reference to the terms of the working agreement which the employees have made, is to be found at least some evidence of who are members of the class or craft covered by the agreement. The Board also recognizes that this is a criterion, for in its First Annual Report to Congress, after noting that the Act does not give it authority to define the crafts or classes, it says: 'So far as possible the Board has followed the past practice of the employees *in grouping themselves* for representation purposes and of the carrier *in making agreements* with such representatives.'" (Emphasis supplied.)

Also the court held:

> "* * * But, as we have seen, the intent of Congress, in leaving undefined by the Act the personnel of the class authorized to choose a representative, was to adopt and confirm the grouping *as it then was recognized and established by mutual agreement of employees and carrier.* * * *" (Emphasis supplied.)

This same court, in *O. R. C. v. National Mediation Board*, 113 F.(2d) 531, also pointed out that the Act was intended not merely to protect independence and the right to organize but also to settle disputes and to avoid interruptions, holding: "Accordingly it aims not to compel the creation of new craft or class lines but to recognize the lines which are drawn in the industry." And finally the court cited the proviso of Section 1, Fifth, in the following language:

> "* * * The Railway Labor Act provides that 'no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action.'"

But in the present case, this same court upheld a ruling of the Board which would destroy existing con-

tractual relations and minority organizations of the employees, and prevent an organization, which had represented a particular class of yardmen for many years prior to and since the adoption of the Act, from continuing to represent these employees who desired and were satisfied with that representation.

In the present case, the Board and the court disregarded long-established practices of railroad employees in the matter of self-organization and opened the way for the compulsory reorganization of large numbers of railway employees, contrary not only to their desires but to long-established practices.

The Switchmen's Union has always been an organization of yardmen, whose work is localized in particular points on a railroad system. The Brotherhood is an organization which includes conductors and brakemen engaged in transportation service and working over large geographical areas. But the Brotherhood also includes within its jurisdiction, yardmen, and, under the Railway Labor Act, that is permissible. The section of the Act quoted in the foregoing opinion provides not only that orders of the Interstate Commerce Commission shall not be "construed to define the crafts according to which railway employees may be organized by their voluntary action", but the proviso continues as follows:

> " * * * nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission." (Section 1, Fifth)

No Board or court is authorized by the Act to require the Brotherhood to exclude or to include yardmen in the membership and, for the same reason, no one is authorized under the Act to require the Switchmen's Union to extend its membership over the thousands of

miles comprehended within the New York Central System in order that it may be permitted to continue to represent yardmen on those portions of the system whereon this union has been long organized. But the practical effect of the rulings in this case is that no organization can survive as a representative of employees unless it seeks to organize, and successfully organizes, within its membership a majority of all the members of its craft who are employed by one operating carrier.

The words "craft or class", which appear in the Act, are lumped together by the lower court so that the word "class" becomes practically meaningless. But, from its nature, the word "class" can be either more *or less* comprehensive than the word "craft". A class of employees might include several crafts as, for example, the railroad carmen, who include carpenters and painters, elsewhere regarded as separate crafts, but who are grouped together in railroad service as a single craft or class. Yardmen who are working on the Michigan Central may be members of the same craft as yardmen working on the Boston & Albany. But as members of the Switchmen's Union, working under Switchmen's Union contracts, they are a separate class of employees from yardmen on the Boston & Albany, working under a Brotherhood contract.

Vice President Walber of the New York Central testified that for the craft of train dispatcher, the Boston & Albany, New York Central, and Big Four had agreements with the American Train Dispatchers' Association. But on the Michigan Central, the dispatchers' agreement was with the Order of Railway Telegraphers. He testified that the Railroad Yardmasters of North America held agreements on parts of the New York Central lines; but that on the Big Four there was an agreement with the Big Four System Yardmasters'

Association; and on the Ohio Central lines, the Brotherhood of Railroad Trainmen represents yardmasters. (R. 168)

If the fundamental principle of the Act, enunciated in the two cases previously cited, were maintained in the present case, the right of self-organization of the employees would be held superior to any coercive effort by a majority of one craft to compel all craft employees everywhere on a railroad system to accept their representation.

The United States Circuit Court of Appeals for the Sixth Circuit recognized this principle in *Brotherhood of Railway and Steamship Clerks v. N. C. and St. L. Ry. Co.*, 94 F. (2d) 97. In that case, there was a dispute over whether two classes of so-called "clerks" should be voted separately or jointly. One class of clerks had been organized for many years and had an agreement with the carrier. In 1934, the Brotherhood of Railway and Steamship Clerks organized a majority of other classes of station workers and some of the clerical employees. The Board voted the clerical employees and the others separately. The clerical employees favored their own association by a majority vote, whereas the other employees voted for the Brotherhood. The total of both ballots would have given a majority to the Brotherhood. The Brotherhood sued for an injunction to compel the carrier to treat with it as the designated representative of both classes of employees. The issues in that case paralleled exactly the issues in this case, but relief was denied and the Circuit Court of Appeals affirmed the decision of the District Court. The Court of Appeals held that the intent of the Act was to preserve existing crafts and classes of employees as units for collective bargaining, citing Section 1, Fifth, and Section 2, Fourth, and holding, in part, as follows:

"The terms 'craft' or 'class' are not defined. It is

fair inference that the *Congress intended that collective bargaining groups already constituted and functioning were to be recognized*, and it is likewise fair inference that the terms were left sufficiently elastic to meet not only changing conditions but also varying existing conditions among the employees of carriers differing greatly in size, number of employees, intensiveness of their organization, and differences in its origin, scope, and development. * * * " (Emphasis supplied.)

We submit that the holding of the Sixth Circuit is in direct conflict with the holding of the Court of Appeals in the present case, but that the holding of the Sixth Circuit is consistent with the two opinions of the court below in the cases previously cited.

It should further be pointed out that on the very day on which the instant case was decided, the same court unanimously made an inconsistent ruling in *B. R. T. v. National Mediation Board*, No. 8311, which the majority opinion treats as an exception, but which we submit is consistent only with the previous opinions of the court and with the dissenting opinion in the instant case.

II

Misconstruction of the Railway Labor Act

One of the major purposes of the Act is stated to be (Section 2 (Clause 2)) "to forbid any limitation upon freedom of association among employees or any denial as a condition of employment or otherwise of the right of employees to join a labor organization" and, (Section 2 (Clause 3)) "to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act."

In the same Section 2, under the heading of "General Duties", it is provided: "First. It shall be the duty of all carriers, their officers, agents and employees to exert

every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions" etc. Previously, it had been provided, in Section 1, Paragraph Fifth, that "Nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission." From the foregoing provisions, it must be evident, first, that the employees have the right to organize in such numerical or geographical units as they themselves desire and, second, that when an organization of employees has made a contact with a carrier, it is the duty of the carrier and of the employees "to exert every reasonable effort to make and maintain" such an agreement.

But when the Board decided that all yardmen employed by the New York Central Railroad Company must be voted to determine a single representation, the Board made it inevitable that the minority of such yardmen who were members of the Switchmen's Union would no longer be able to be represented by representatives of their own choosing or to work under contracts which their organization had maintained continuously for some thirty years.

The Board attempted to justify its ruling and was sustained by the lower courts on the theory that the amendments of 1934, which authorized the Board to hold elections to determine employee representation, which authorized the Board to "designate who may participate in the election" (Section 2, Ninth), and which provided that "the majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act"—(Section 2, Fourth)—seriously modified the foregoing General Purposes and General Duties which were, however, *rewritten into the Act in the amendments of 1934.*

The Board and the courts below took the position that the "majority of any craft or class of employees" must mean the majority of all the workers in a particular craft or class who were employed by a single carrier. But the Board was not compelled so to construe the Act, because the very language of Section 2, Ninth, authorizing the Board to hold an election, limited the authority of the Board, and limited participation in the election, to the employees "involved in the dispute". It was not only unnecessary but absolutely contrary to fact for the Board to take the position that all the employees of one craft, that is, all yardmen of the New York Central Railroad, were involved in a dispute over representation when there was not the slightest question that, as a matter of fact, a large majority of the yardmen had exactly the representation they desired through the Brotherhood, which no one was disputing. There was, furthermore, no evidence before the Board that any substantial number of yardmen working under the Switchmen's Union contracts were dissatisfied with that representation. However, if some of these yardmen, members of the Brotherhood, but working under contracts held by the Switchmen's Union, *did* raise a dispute over their representation, then, as a matter simple fact, no employees would be involved in that dispute except those working under the Switchmen's Union contracts.

The Board and the courts below seem to have assumed that all employees of a particular craft or class who are employed by a single carrier are immediately "involved in the dispute" when any group of such employees desire a change in their representation. But the provision of Section 2, Paragraph Fourth is *not* that "the majority of any craft or class of employees" *who are employed by a carrier* "shall have the right to determine who shall be the representative of the craft or

class for the purposes of this Act". On the contrary, if we read ahead into Paragraph Ninth, it is evident that the words which are implied, but omitted, in Paragraph Fourth are the following italicized words: "The majority of any craft or class of employees" *who are involved in a dispute* "shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

This reasonable construction of the Act, so as to make the provision for an election consistent with the repeatedly-declared right of self-organization, is in harmony with the dissenting opinion of Mr. Justice Rutledge. It is unquestionably true, as the dissenting opinion points out, that the Board must decide "who may participate in the election"; and, obviously, "that decision is not to be made arbitrarily or uniformly in all cases without regard to the varying conditions presented". In other words, as we contend, the Board must determine what employees are "involved in the dispute" and, on that basis, decide who may participate in the election.

We think it would be an arbitrary decision if the Board were to hold that all employees of a craft were involved in a dispute over representation despite evidence that the vast majority of the employees was entirely satisfied with, and not involved in any dispute over, their representation. However, we can certainly agree with the dissenting justice that this is a matter for the Board to decide.

The Board is obligated to make a decision based on an investigation of the facts; but, in the present case, the Board made its decision on the basis that it had no discretion, but was required under the law to vote all the yardmen of the entire railroad. (R. 53, 4th full par.) It was that ruling that was upheld by the courts; and we submit that that ruling not only disregards the duty

to determine an issue of fact, which is imposed on the Board in Section 2, Ninth, but also construes the election provision of the Railway Labor Act in such a manner as to run absolutely contrary to the general purposes and general duties declared in the Act.

III

Public Importance of the Issues

The issues here involved are of grave public importance. This Court will take judicial notice of the following matters of common knowledge:

(1) That railroad transportation is of vital importance to the entire nation and is a critical necessity in time of war;

(2) That the efficiency and safety of railroad transportation depends in considerable measure upon the maintenance of satisfactory and harmonious relations between employer and employee;

(3) That, under the Act, there have been no strikes or interruptions of service of any importance for nearly seventeen years, since the passage of the Act May 20, 1926;

(4) That railway employees are almost completely organized in brotherhoods and unions of long standing whose jurisdictions have been long established.

It is made clear in the evidence in this case that, as a result of frequent overlapping of the jurisdiction of various railway labor organizations, different organizations of employees of the same craft are common on the large railroad systems. It is obvious that the basis of sound collective bargaining lies in the requirement of the Act that "employees shall have the right to organize and bargain collectively through representatives of their own choosing (Section 2, Fourth). Thus, it is apparent that the issues in this case are of great public importance and that an authoritative construc-

tion of the Act to lay down principles, under which the Board will act in conducting an election, is urgently needed.

Conclusion

Without undertaking at this time to present an adequate argument on the merits, we submit that the petition for a writ of certiorari should be granted in order that the Court may review the decision of the United States Court of Appeals for the District of Columbia in this case.

Respectfully submitted,

DONALD R. RICHBERG,

RUFUS G. POOLE,

Attorneys for Petitioners

(Appendix follows)

APPENDIX

Excerpts from the Railway Labor Act

(Act of May 20, 1926, as amended by the Act of June 21, 1934, U.S.C. 45:151-163)

TITLE I

DEFINITIONS

SECTION 1. When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any express company, sleeping car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided, however,* That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

* * * * * * * * *

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

* * * * * * * * * *

GENERAL PURPOSES

SECTION 2. (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all

disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

GENERAL DUTIES

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall

be the representative of the craft or class for the purpose of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

* * * * * * * * *

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to

the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

* * * * * * * * * *

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

NO. 48

SWITCHMEN'S UNION OF NORTH AMERICA, In its own right, etc., T. C. CASHEN, et al.,

Petitioners,

vs.

NATIONAL MEDIATION BOARD, GEORGE A. COOK, WILLIAM M. LEISERSON, et al.

BRIEF FOR PETITIONERS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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OPINIONS BELOW

The District Court rendered no opinion. It issued findings of fact and conclusions of law, which appear at R. 76-81.

The opinion of the Court of Appeals for the District of Columbia is reported in 135 F (2d) 785, and appears

at R. 160-181, and a dissenting opinion by Mr. Justice Rutledge appears at R. 181-193.

JURISDICTION

The judgment of the Court of Appeals was entered on February 15, 1943. The petition for certiorari was filed on April 16, 1943, and was granted May 24, 1943. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended.

STATUTE INVOLVED

This case involves the Railway Labor Act, as amended in 1934, 48 Stat. 1185, 45 U.S.C. §151, *et seq.*, the pertinent provisions of which are set forth in the Appendix, *infra*.

STATEMENT

The New York Central Railroad Company was established in 1914. It was formed through a consolidation of the New York Central & Hudson River Railroad and the Lake Shore & Michigan Southern Railway, which operated lines from New York City to Chicago. That portion of the New York Central west of Buffalo has since been commonly known as Lines-West, while that portion east of Buffalo has been commonly known as Lines-East. The New York Central Railroad Company also operates the lines of several separate lessor or subsidiary corporations under long-term leases or controlling stock ownership. The companies whose lines are thus operated include the Boston & Albany, the Cleveland, Cincinnati, Chicago & St. Louis (Big Four), the Michigan Central and the Toledo & Ohio Central. (R. 33, 34, 76, 77.)

This case arose out of an alleged dispute over whether

the yardmen working in certain yards of the New York Central Railroad Company were legally entitled to representation by the Switchmen's Union of North America (hereinafter referred to as the Switchmen's Union), one of the petitioners, or by the Brotherhood of Railroad Trainmen (hereinafter referred to as the Brotherhood), one of the respondents. At the time the dispute was investigated by the National Mediation Board (hereinafter referred to as the Board), and for many years before, the yardmen employed on the New York Central were represented and working under agreements negotiated by either the Switchmen's Union or the Brotherhood. (R. 150-152) The Switchmen's Union was the accepted representative of yardmen in all yards on the Michigan Central lines west of the Detroit River (including the South Bend Transfer Crews) and in all yards of the New York Central-Lines West (of Buffalo) except nine yards covered by Brotherhood contracts. The Brotherhood represented yardmen in all yards of the Michigan Central east of the Detroit River (these being in Canada), all yards of the Boston & Albany, the New York Central-Lines East (of Buffalo), the Big Four and the Toledo & Ohio Central Lines. There was no question raised by the Switchmen's Union or by anyone else concerning the right of the Brotherhood to represent yardmen covered by Brotherhood contracts. (R. 34, 35, 79, 80.)

On July 2, 1940, the Brotherhood invoked the services of the Board to investigate an alleged dispute among New York Central yardmen, and claimed the right to represent all yardmen employed by the New York Central Railroad Company.[1] The Brotherhood contended that *all* the yardmen employed by the com-

[1] With its application the Brotherhood presented to the Board signed authorizations from 4,749 out of approximately 6,087 yardmen employed by the Company. (R. 35, 79.)

pany should be voted for the purpose of selecting a single representation. (R. 27-31.)

The Switchmen's Union opposed the demand of the Brotherhood, contending as follows:

> 1. That no one was disputing the right of the Brotherhood to represent the yardmen covered by its contracts and that, therefore, those yardmen were not involved in any dispute over representation;
>
> 2. That there was no evidence that any specific number of yardmen covered by the Switchmen's Union contracts desired any different representation and that, therefore, there was no basis for holding an election;
>
> 3. That, in any event, only the yardmen covered by the Switchmen's Union contracts could be regarded as "involved" in any dispute; and that the Board was authorized only "to take a ballot of the employees involved" in a dispute. (R. 29-32)

The Board held, however, that, as a matter of law, it was required to vote all the employees of a single carrier working in one craft whenever a dispute arose among some of the craft workers over their representation. (R. 46.) It held that the New York Central Railroad Company was a single carrier and that, accordingly, since a dispute had arisen over the representation of some of the yardmen employed by this carrier, *all* the yardmen must be voted in an election which would determine one representation for all such employees. (R. 27-47.)

It was obvious that if the ruling of the Board were correct the Switchmen's Union could no longer represent its members, even in yards on parts of the railroad system where the overwhelming majority of the yardmen desired representation by the Switchmen's Union. The total number of yardmen employed by the New York Central Railroad Company was approximately

6,087. Disregarding the New York Central-Lines West and the Michigan Central, where a majority of the yardmen were covered by the Switchmen's Union contracts, the Brotherhood contracts covered approximately 3,653 yardmen employed on the Boston & Albany, the New York Central-Lines East, the Big Four and the Toledo & Ohio Central Lines. (R. 35.) It was evident, therefore, at the outset that a majority of *all* the yardmen employed by the New York Central Railroad Company would vote for the Brotherhood. But the Board decided to vote all the yardmen, and conducted an election, despite the protests of the Switchmen's Union, and certified that the Brotherhood had received a majority of the votes (as was inevitable).[2] (R. 47-49.)

Thereupon, the Switchmen's Union filed a bill of complaint (which inaugurated the present case) in the District Court of the United States for the District of Columbia, seeking, first, to enjoin the Board from holding an election, and then, by an amended complaint after the election had been held, seeking to restrain the Brotherhood and New York Central from bargaining and seeking to have the action and certification of the Board annulled and set aside as being without authority and in violation of the provisions of the Act under which the Board purported to act. (R. 3-27.)

The District Court dismissed the complaint on July 10, 1942, after making findings of fact and conclusions of law supporting the action of the Board. (R. 76-81.) Thereupon, an appeal was taken to the United States Court of Appeals for the District of Columbia. While that appeal was pending, the District Court granted the plaintiff's motion for a preliminary injunction pending appeal.

The majority opinion of the Court of Appeals sus-

[2] Of the 7,187 employees eligible to vote, 4,112 voted for the Brotherhood and 941 for the Switchmen's Union. (R. 49.)

tained the position of the Board in holding that the Act compelled the Board to vote all the employees of a craft employed by a single carrier when a dispute arose requiring an election to determine the representation of members of the craft. (R. 160-181.) In his dissenting opinion, Mr. Justice Rutledge took the position that under the Act the Board had the discretion to determine whether or not all the employees of a craft must be voted whenever a dispute arose among some of the employees which required an election to determine their representation. (R. 181-193.)

Thus, there are three possible constructions of the Act presented for the consideration of this Court: (1) that the Act compels the selection of a single representation by all employees of a particular craft who are employed by a single carrier (the majority opinion of the Court of Appeals); (2) that the Act gives the Board a discretion to determine the appropriate or proper unit of employees who may participate in the election (the dissenting opinion of the Court of Appeals); (3) that the Act authorizes the Board to allow only those employees who are "involved in the dispute" to participate in the election, and that the Board cannot arbitrarily include as "employees involved in the dispute" employees who are not, in fact, involved in any dispute over their representation (the contention of petitioners).

Questions Presented

When this Court granted its writ of certiorari in this and three other cases involving the application of the Railway Labor Act,[3] it certified four questions

[3] The other three cases in which this Court granted the petitions for writs of certiorari on May 24, October Term, 1942, were: No. 23—*General Committee of Adjustment of Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas R. R. Co.*; No. 27—*General Committee of Adjustment of Brotherhood of Locomotive Engineers v. Southern Pacific Company*, and No. 41—*General Grievance Committee of Brotherhood of Locomotive Firemen and Enginemen v. General Committee of Adjustments of Brotherhood of Locomotive Engineers.*

for counsel to discuss in their briefs and on oral argument, in so far as such questions were applicable in each case. (R. 196.)

The questions certified by the Court which are applicable to this case are:

> I. What bearing, if any, the Norris-LaGuardia Act has on the propriety of granting the relief sought.
>
> II. Whether the District Court had jurisdiction to review the certification of the Board.

Other questions presented are:

> III. Whether under the facts of this case a dispute existed within the jurisdiction of the Board as conferred in Section 2, Ninth, of the Railway Labor Act.
>
> IV. Whether the Board was *required* by the Railway Labor Act to hold that all employees of a single craft employed by a single operating carrier must be voted to determine a single representation, in situations where, as a matter of fact, a large majority of these employees are satisfied with their representation.

Summary of Argument

I

The Norris-LaGuardia Act is inapplicable to a case of this character. Paragraphs 7 and 8 of the prayer of the complaint are the only parts of the prayer which have not become moot. Paragraph 7 requests the Court to annul and set aside the Board's certification and paragraph 8 seeks to restrain the Brotherhood and New York Central Railroad Company from negotiating or maintaining an agreement on the Michigan Central and New York Central-Lines West.

The Norris-LaGuardia Act as shown by Section 1 seeks only to regulate the issuance of restraining orders and injunctions.

Paragraph 7 is not within the reach of this statute, as it does not seek to restrain or coerce anyone. It asks for relief of a declaratory nature.

The relief prayed for in paragraph 8 falls within the exception to the Norris-LaGuardia Act recognized in the *Virginian* case, *infra*, which held that the Act had no application to an injunction suit to force the carrier to treat with a certified representative in accordance with the requirements of Section 2, Ninth. The basis for the exception to the Act recognized in the *Virginian* case, was the fact that the injunction sought was in furtherance of a specific requirement of the Railway Labor Act, a subsequent enactment. Paragraph 8 is within this exception, as it is in furtherance of Section 2, Fourth, which guarantees employees "the right to organize and bargain collectively through representatives of their own choosing" and provides that "the majority of any craft or class of employees shall have the right to determine who shall be representative of the craft * * *".

The text of the Norris-LaGuardia Act also reveals that it was not intended to apply to cases of this character. Its declared purpose in Section 2 is to protect the employee's right of self-organization. Sections 7 and 9 contain requirements with which it would be impossible to conform in a proceeding of this character. The legislative history is to the same effect.

Courts have entertained many similar suits since the Board was granted powers in the 1934 amendment to determine jurisdictional disputes and there is only one reported case where the Norris-LaGuardia point was raised.

To make the Norris-LaGuardia Act applicable may

well leave an aggrieved labor organization without any adequate judicial remedy in situations like the case at bar.

II

A certificate issued by the Mediation Board pursuant to Section 2, Ninth, of the Railway Labor Act, is definitive of rights and duties that are enforceable by the parties affected. The District Court may review such a certification at least to the extent of determining if it is predicated upon an error of law.

The instant suit, in so far as it is one against the Mediation Board and its members, is not a suit against the United States. This being so, decisions of this Court confirm that it was within the District Court's jurisdiction to entertain the suit as to all parties defendant.

III

The jurisdiction of the Board in representative cases is limited to those where a "dispute shall arise among a carrier's employees as to who are the representatives of such employees * * * ". (Sec. 2, Ninth, Railway Labor Act, Appendix, *infra.*)

It is doubtful whether the controversy in this case constituted a dispute within the meaning of the Act.

The real controversy was between the two organizations, namely, the Brotherhood and Switchmen's Union, with the former contending for a single representation for all yardmen on the New York Central Railroad (including the New York Central Railroad-Lines East and Lines West of Buffalo, the Big Four, Michigan Central Railroad Company, the Toledo & Ohio Central Railroad Company, and the Boston & Albany Railroad Company), and the latter for a continuance of representation by separate parts of the New York

Central Railroad as reflected by the contracts of the two organizations then in effect.

The facts show that no one was disputing the right of the Brotherhood to represent yardmen covered by Brotherhood contracts. Nor is there any conclusive evidence to show that yardmen covered by contracts of the Switchmen's Union were disputing the rights of that organization to continue to represent them.

If a representation dispute was presented, it was a dispute as to who was entitled to represent the yardmen on the Michigan Central and New York Central-Lines West who were then covered by switchmen's contracts. It did not involve the yardmen on the other lines of the New York Central, namely, the Boston & Albany Lines, the New York Central-Lines East, the Big Four, and the Toledo & Ohio Central Lines. The yardmen on these lines were represented by the Brotherhood and no one was questioning their representation.

The ruling of the Board was not justified on the basis of Section 2, Fourth, which provides that "the majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class * * * ". The words "majority of any craft or class of employees" does not necessarily mean the majority of all the workers in a particular craft who are employed by a single carrier.

The term "craft or class" has no geographical connotation, but refers to employees who perform the same type of work.

The words which are impliedly omitted in Section 2, Fourth, are the following italicized words "the majority of any craft or class of employees" *who are involved in a dispute* "shall have the right to determine who shall be the representative of the craft or class for purposes of this act".

The discretion possessed by the Board is confined to a determination as to what employees are engaged in a dispute and it would be an abuse of discretion to vote employees in an election who are not so involved.

The Board has pursued two diametrically opposite policies in determining what constitutes the bargaining unit. When there is no disagreement, the Board respects the right of self-organization and determines representation disputes on the basis of the bargaining units established theretofore. When the bargaining unit, however, is a matter of dispute, it has been the practice of the Board to treat the unit as carrier-wide.

IV

The action of the Board in voting all of the yardmen of the New York Central Railroad to determine a single representation constituted an unlawful limitation upon the "freedom of association among employees," and an unauthorized interference with the right of employees to designate and bargain collectively through representatives of their own choosing.

The underlying principle written into the act is the right of self-organization.

The practical effect of the ruling of the Board is to destroy this right, as it denies to railroad employees the right to maintain an organization on a railroad and to hold a contract covering a portion of a railroad system, unless that organization desires and is able to extend its membership over the entire system, so that it can at all times command a majority vote of all employees doing similar work.

The act intends that groups which have chosen to bargain as units may continue to do so. This interpretation is clearly supported by the decisions of the Courts.

ARGUMENT

I

THE NORRIS-LaGUARDIA ACT HAS NO BEARING ON THE PROPRIETY OF GRANTING THE RELIEF SOUGHT IN THIS SUIT

This suit is brought by the Switchmen's Union in its own right and by certain of its officers as representatives of the class of yardmen on the Michigan Central Railroad Company and the New York Central-Lines West, against the National Mediation Board, its officers, individually and as members of the Board, the Brotherhood of Railroad Trainmen, and the New York Central Railroad Company. In brief, it complains that the Board and its members acted arbitrarily and unlawfully in combining the yardmen on the New York Central in one bargaining unit for the purpose of choosing a single representative and thereafter in certifying that the BRT had been duly designated as the representative for all the yardmen on the New York Central.

The complaint prays the Court (a) to restrain the Board and its members from certifying the Brotherhood as the duly authorized representative of yardmen on the Michigan Central and New York Central-Lines West (Par. 2 of prayer, R. 24-25); (b) to enjoin the Board from entering an order combining the yardmen employed on the New York Central-Lines West, and on the Michigan Central with the yardmen employed on the balance of the New York Central Company, as a single craft of employees (Par. 3 and 4 of prayer, R. 25); (c) to vacate, annul, and set aside the Board's findings and conclusions of law that the yardmen on the New York Central constitute a single craft and

its order that an election be conducted on that basis (Par. 5 and 6 of prayer, R. 25-26); (d) to annul, vacate, and set aside the Board's certification that the Brotherhood has been duly designated to represent the craft of yardmen on the New York Central (Par. 7, R. 26); and (e) to restrain the Brotherhood and the New York Central Railroad Company from negotiating, entering into, or maintaining an agreement covering working conditions relative to yardmen employed on the Michigan Central and the New York Central Railroad-Lines West. (Par. 8, R. 26.)

The controversy is moot with respect to the relief prayed for in (a), (b) and (c) above, as the action of the Board sought to be restrained has already been taken. The application of the Norris-LaGuardia Act will, therefore, be considered only with respect to the relief requested in (d) and (e).

The Norris-LaGuardia Act (47 Stat. 70, 29 USC §101, *et seq.*) provides in Section 1 that:

> No Court of the United States * * * shall have jurisdiction *to issue any restraining order or temporary or permanent injunction* in a case involving or growing out of a labor dispute, except in strict conformity with the provisions of such sections; nor shall any such restraining order or permanent injunction be issued contrary to the public policy declared in such sections. (Emphasis ours.)

The term "labor dispute" is defined in Section 13 of the Act as including

> * * * any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating * * * conditions of employment * * *.

While the controversy involved in this case may appear to be within the scope of the term "labor dis-

pute",[1] it is submitted that the Norris-LaGuardia Act is inapplicable to a case of this character and particularly to the relief requested in Paragraphs 7 and 8 of the complaint.

Paragraph 7 of the prayer requests the Court to annul, vacate, and set aside the Board's certification. The Norris-LaGuardia Act, as shown by Section 1 thereof, seeks only to regulate the issuance of restraining orders and injunctions. Both its text and history clearly show that it was designed to limit and regulate the granting of orders which sought to coerce or restrain acts. Paragraph 7 does not seek to restrain or coerce anyone. It only requests the Court to annul and vacate the certification complained of. The prayer is declaratory in nature and substantially the same as the judgment which would have been requested had the petitioners denominated their suit a declaratory judgment action. As the Norris-LaGuardia Act admittedly has no application to a declaratory judgment action, it would be unreasonable to hold it applicable to the issuance of decrees granting declaratory relief in an equitable action.

We further believe that the relief prayed for in Paragraph 8 falls within the exception to the Norris-LaGuardia Act recognized in *Virginian Ry. Co. v. System Federation No. 40*, 300 U. S. 515. In this case, it was held that the Norris-LaGuardia Act had no application to an injunction suit to force the carrier to treat with a certified representative in accordance with the requirements of Section 2, Ninth. In sustaining the mandatory injunction which had been granted by the lower court, this Court observed (562-563):

> Petitioner assails the decree for its failure to

[1] See *Fur Workers Union, Local No. 72 v. Fur Workers Union*, 105 F. (2d) 1 (App. D. C.), affirmed, 308 U. S. 537, and *International Brotherhood, etc. v. International U., etc.*, 106 F. (2d) 871 (C. C. A. 9th), where Norris-LaGuardia Act was held applicable to representation disputes.

conform to the requirements of section 9 of the Norris-LaGuardia Act (29 U.S.C.A. § 109), which provides: "Every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in * * * findings of fact made and filed by the court". The evident purpose of this section, as its history and context show, was not to preclude mandatory injunctions, but to forbid blanket injunctions against labor unions, which are usually prohibitory in form, and to confine the injunction to the particular acts complained of and found by the court. We deem it unnecessary to comment on other similar objections, except to say that they are based on strained and unnatural constructions of the words of the Norris-LaGuardia Act, and conflict with its declared purpose, * * *.

* * * *

It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of section 2, Ninth, of the Railway Labor Act (45 U.S.C.A. § 152, subd. 9), authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act.

If the basis for the exception to the Norris-LaGuardia Act recognized in the *Virginian* case was the fact that the injunction was in furtherance of a specific requirement of the Railway Labor Act, a subsequent enactment, Paragraph 8 of the complaint in the case at bar must be regarded as within the exception. While Paragraph 8 seeks to restrain the carrier from treating with a representative which for the purpose of this question must be regarded as having

been designated in violation of the Railway Labor Act, it is in furtherance of Section 2, Fourth, which guarantees employees "the right to organize and bargain collectively through representatives of their own choosing," and which provides that "the majority of any craft or class of employees shall have the right to determine who shall be representative of the craft or class for purposes of this act." If the Petitioners' interpretation of Section 2, Fourth, is accepted as the correct one, the action of the Board will, in the absence of the relief sought, wrongfully deprive the Switchmen's Union of rights guaranteed by this paragraph.

It is true that the complaint in the instant case does not allege as did the complaint in the *Virginian* case that the carrier had refused to treat with the Switchmen's Union. But the facts alleged do show clearly that the New York Central reasonably can be expected to cease treating with the Switchmen's Union and commence bargaining with the Brotherhood as directed by Section 2, Ninth, unless restrained, if the certification of the Board is allowed to stand. It can also be assumed that the New York Central will honor its contractual obligations and continue to bargain with the Switchmen's Union as theretofore if not required to treat with the Brotherhood.

Moreover, it is clear from its text that the Norris-LaGuardia Act was not intended to apply to cases of this character. Its declared purpose in Section 2 states that the employee

> * * * shall be free from the interference, re-

The obligation is also in furtherance of Section 2, First, which makes it the duty of carriers to make and maintain agreements concerning rates of pay, etc. From the facts alleged in the complaint, it may reasonably be anticipated that the New York Central would not maintain its agreements with the Switchmen's Union after the Brotherhood had been certified as the representative of all its yardmen. The *Virginian* case, *supra*, recognized that the provisions of Section 2, Fourth, were enforceable by the Courts and permitted a certification to be challenged by the carrier on the basis of the provisions in this Section.

straint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Section 4 shows that the Act was intended to protect *labor* in its various activities. Sections 7 and 9 also contain requirements which can have no application to this type of proceeding and with which it would be impossible to conform.

The legislative history is to the same effect. The Senate Committee Report (Sen. Rep. No. 163, 72d Cong., 1st Sess., p. 25) explained that the main purpose of the definitions in Section 13

> is to provide for limiting the injunctive powers of the Federal courts only in the special type of cases, commonly called labor disputes, in which these powers have been notoriously extended beyond the mere exercise of civil authority and wherein the courts have been converted into policing agencies devoted in the guise of preserving peace, to the purpose of aiding employers to coerce employees into accepting terms and conditions of employment desired by employers.
>
> The proposed bill is designed primarily as a practical means of remedying existing evils, and limitations are imposed upon the courts in that class of cases wherein these evils have grown up and become intolerable.

During the course of debate on the bill in the Senate, Senators Norris, Blaine and Wheeler, who were supporting the measure, denied that it would be applicable to suits brought by employees to enforce their rights under the Railway Labor Act. (75th Cong. Record. Vol. 75, Part 5, pp. 4936-4937.)

In conclusion, it should be emphasized that the

courts have entertained many suits of this character since the Board was granted powers in the 1934 amendment to determine jurisdictional disputes, and there is only one reported case where the Norris-LaGuardia point has been raised or considered.[*] Unless there are compelling reasons for upsetting this past procedure for reviewing the validity of Board action under Section 2, Ninth, we believe that it should be continued as heretofore. To make the Norris-LaGuardia Act applicable in these cases may well leave an aggrieved labor organization without any adequate judicial remedy.

II

THE DISTRICT COURT HAD JURISDICTION TO REVIEW THE BOARD'S CERTIFICATION

There would seem to be two aspects to the question whether the district court had jurisdiction to review the Board's certification—the first being whether a certification by the Board is conclusive both as to the facts and the law and wholly immune from judicial review, and the second being whether the district court could, in the proper exercise of its equity jurisdiction, entertain this particular suit.

1. A certification issued by the Mediation Board pursuant to Section 2, Ninth, of the Railway Labor Act,

[*] *Association of C. E., etc. v. Brotherhood of Ry. and S. S. Clerks*, 85 F. (2d) 152 (C.C.A. 7); *Brotherhood of Locomotive Firemen, etc. v. Kenan*, 87 F. (2d) 651 (C.C.A. 5.), certiorari denied, *sub nom, Grand International Brotherhood v. Kenan*, 301 U. S. 687; *Brotherhood of R. R. Trainmen v. National M. Board*, 88 F. (2d) 757 (App. D. C.); *National Federation of Ry. Workers v. National M. Board*, 110 F. (2d) 529 (App. D. C.), certiorari denied, 310 U. S. 628; *Order of Ry. Conductors v. National Mediation Board*, 113 F. (2d) 531 (App. D. C.); *Brotherhood of R. R. Trainmen v. National M. Board*, 135 F. (2d) 780 (App. D. C.); *cf. Brotherhood of Railroad Shop Crafts, etc. v. Lowden*, 86 F. (2d) 458 (C.C.A. 10), certiorari denied, 300 U. S. 659; *Nord v. Griffin*, 86 F. (2d) 481 (C.C.A. 7), certiorari denied, 300 U. S. 673; *Railroad Yardmasters of North America v. Pittsburgh & L. E. R. Co.*, 39 F. Supp. 876 (N. D. Ohio).

[*] *Cole v. Atlanta Terminal Co.*, 15 F. Supp. 131 (N. D. Ga.)

is definitive of enforceable rights and duties. Such a certification imposes upon the carrier the affirmative obligation to treat with the representative certified; it confers upon the representative chosen by the majority of employees the exclusive right to bargain for all the employees, and it prohibits the minority from bargaining as a group with the carrier. *Virginian Railway Co. v. System Federation, supra.* Certainly an act of a public body that so directly affects rights of persons and property is reviewable in the courts.

The fact that the Mediation Board has no authority to enforce the rights and duties defined by its certification does not deprive the courts of jurisdiction to review such a certification. The Supreme Court has held that determinations which establish rights are judicially reviewable even though not in the form of an order. *Shields v. Utah Idaho Cent. R. Co.*, 305 U. S. 177; *Utah Fuel Co. v. National Bituminous Coal Com'n.*, 306 U. S. 56. See also, *Rochester Telephone Corp. v. United States*, 307 U. S. 125; *Federal Power Commission v. Pacific Power & L. Co.*, 307 U. S. 156. Nor does the fact that the Railway Labor Act contains no provision for judicial review of Board certifications manifest a legislative intention that such certifications shall be conclusive upon the courts. In *Shields v. Utah Idaho Cent. R. Co., supra*, a determination by the Interstate Commerce Commission pursuant to Section 1; First, of the Railway Labor Act was collaterally attacked and, despite the absence of any provision in the

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In *American Federation of Labor v. National L. R. Board*, 308 U. S. 401, while the Court held that a certification of the National Labor Relations Board is not a final order subject to review in a circuit court under Section 10(f) of the National Labor Relations Act, the opinion implies that a certification which has conferred legally enforceable private rights may be reviewable in the district court under Section 24 of the Judicial Code. In *Pittsburgh Plate Glass Co. v. National Labor R. Board*, 313 U. S. 146, a certification by the National Labor Relations Board was held subject to challenge when a complaint of unfair practices is predicated on that certification.

Act for review of such a determination, the Court reviewed it in the same manner as any other order of the Commission is reviewed.

In the *Virginian* case, the Supreme Court reviewed the validity of a certification by the Mediation Board which had been challenged in a suit against the carrier, and the lower federal courts have reviewed such certifications to the same extent that determinations of other administrative tribunals are judicially reviewed.*

In the instant case petitioners alleged that in issuing the certification in question the Board committed errors of law, and it is petitioners' view that the district court may review the certification to the extent of determining the validity of that allegation.

2. Assuming that the district court may review a certification by the Board, at least to the extent of determining whether it is predicated upon an error of law, it must next be considered whether it was within the jurisdiction of the district court to entertain this particular suit.

It was established in *Texas & N. O. R. Co. v. Brotherhood of Ry. & S. S. Clerks*, 281 U. S. 548, and *Virginian Railway Co. v. System Federation, supra*, that the deprivation of the right to bargain as exclusive craft representative results in irreparable injury and warrants equitable relief. Under these decisions it is not to be doubted that the district court had jurisdiction in so far as this suit relates to the carrier and the competing union. Ingenious reasoning has been suggested

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* See, e. g., *Brotherhood of R. R. Trainmen v. National M. Board*, 88 F. (2d) 757 (App. D. C.); *National Federation of Railway Workers v. National M. Board*, 110 F. (2d) 529 (App. D. C.), certiorari denied, 310 U. S. 628; *Order of Ry. Conductors v. National Mediation Board*, 113 F. (2d) 531 (App. D. C.); *Brotherhood of Locomotive Firemen, etc. v. Kenan*, 87 F. (2d) 651 (C.C.A. 5), certiorari denied *sub nom. Grand International Brotherhood v. Kenan*, 301 U. S. 687; *Nashville, C. & St. L. Ry. v. Railway Employees' Dept., etc.*, 95 F. (2d) 340 (C.C.A. 6), certiorari denied, 303 U. S. 649; *Brotherhood of Ry., etc. v. Nashville, C. & St. L. Ry. Co.*, 94 F. (2d) 97 (C.C.A. 6); *Brotherhood of Ry. & S. S. Clerks, etc. v. Virginian Ry. Co.*, 125 F. (2d) 853 (C.C.A. 4).

to reach the conclusion that in so far as this suit is one against the Board and its members, however, it is a suit brought against the United States without its consent and could not be heard by the district court. This reasoning proceeds substantially as follows:

> a. The immunity of the United States from suit extends to the Mediation Board. Congress has not consented that the Board should be subject to suit and the district court could not, therefore, entertain a suit against the Board.
>
> b. Governmental immunity from suit does not extend to, and suits may be brought against, members of the Board when they are acting or threaten to act outside the scope of their lawful authority. Such suits are suits against the members in their individual capacities.
>
> c. In suits brought against Board members as individuals, equitable relief is available only if their conduct is at the time of the suit such as satisfies the requisites of equity jurisdiction.
>
> d. Since the Board has no power to enforce its certifications, if members of the Board have acted outside the scope of their authority and issued an illegal certificate, no suit will thereafter lie against them in equity because they can engage in no further conduct irreparably injurious to employees prejudiced by the certificate issued. Nor can the court in such a case annul and set aside the certification, because the certification is the official act of the Board and a decree directly affecting the certification is precluded by the ban upon suits against the United States.

Under this reasoning, employees prejudiced by an illegal certification—in this case, the Switchmen's Union—may enjoin Board members from issuing such

a certification, but, once the certification has been issued, the Board members are beyond the reach of equity and their illegal act stands effective.

This line of reasoning misconceives the character of petitioners' suit. Petitioners are not seeking to restrain the Board or the Board members from acting, nor are they asking that the court require them to act. Rather petitioners are asking the court to set aside what is alleged to be an illegal and unauthorized act of the Board members. The petitioners' suit is analagous to a suit for the cancelation of an instrument; it requests the court to act upon the *res*.

It is suggested that such a suit nevertheless is a suit against the United States because a certification is the official act of the Board *qua* Board and a decree aimed directly at such a certification is tantamount to granting relief against the United States. But, while a *valid* certification is the official act of the Board, an illegal certification manifestly is not the official act of the Board. A decree aimed directly at an illegal certification cannot, therefore, be deemed equivalent to a decree entered against the United States. That the relief sought may properly be granted by the district court is confirmed by *Tiger v. Twin State Oil Co.*, 48 F. (2d) 509 (C.C.A. 10th), wherein the court held that (512):

> Courts of equity have power to set aside actions of administrative boards or of inferior courts which are in excess of their jurisdiction.

But even if we assume for purposes of argument that petitioners are, in effect, requesting the court to order the Board members to withdraw the certification, still petitioners' suit is not one against the United States. The contrary conclusion rests upon reasoning which erroneously assumes that the unlawful action of the Board members ceases once the certificate is is-

sued. If, in issuing or threatening to issue an illegal certification, the Board members discharge their statutory duties in an unlawful manner and lose their immunity from suit, their failure to withdraw an illegal certification is equally improper and unlawful. By suffering an illegal certification to remain outstanding, they are unlawfully discharging the duties of their office and a suit should lie against them to require that they discontinue to discharge their duties improperly. Moreover, injury continues to be inflicted by an illegal certification so long as it is permitted to stand. In the instant case, until the certification is annulled the Switchmen's Union is deprived of the right to bargain collectively for the craft and is without an adequate remedy at law for this irreparable injury. In other words, the Board members are not lawfully discharging the duties of their office so long as they permit an illegal certification to stand, and so long as such certification is outstanding the Switchmen's Union continues to suffer irreparable harm. Clearly, we think, the conduct of the Board members—while negative in character—satisfies the requisites of equity jurisdiction.

In this connection, we call attention to the decision in *Garfield v. United States*, 211 U. S. 249. In an opinion by Mr. Justice Day, the Supreme Court held in a mandamus suit against the Secretary of the Interior that a Secretary who has acted outside the authority of his office may be ordered to take such steps as will restore the prejudiced parties to the position they would have been in had he not acted beyond his authority. The rationale of the decision is that such an order is one against an individual whose unlawful conduct has removed his cloak of official immunity and brought him within the reach of legal process. Cf. *West v. Standard Oil Co.*, 278 U. S. 200.

III

NO REPRESENTATION DISPUTE EXISTED WHICH INCLUDED ALL THE YARDMEN OF THE NEW YORK CENTRAL RAILROAD COMPANY AND A CARRIER-WIDE ELECTION TO DETERMINE A SINGLE REPRESENTATION WAS INVALID

At the outset, we wish to emphasize that the jurisdiction of the Board in representative cases is limited to those where a "dispute shall arise among a carrier's employees as to who are the representatives of such employees * * * ". (Sec. 2, Ninth)

On July 2, 1942, when the services of the Board were invoked, the Brotherhood held contracts covering all the yards of the Boston & Albany, the New York Central-Lines East, the Big Four, the Toledo & Ohio Central Lines, all yards of the Michigan Central east of the Detroit River, and nine yards of the New York Central-Lines West, and there is nothing in the record which discloses that any of the yardmen covered by such contracts disputed the right of the Brotherhood to represent them. (R. 79, 80, 110-114, 152.)

The Switchmen's Union held contracts covering all yards on the Michigan Central west of the Detroit River, including the South Bend Transfer Crews, and on all of the yards of the New York Central-Lines West, except the nine yards covered by the Brotherhood contracts. (R. 79, 80, 152.) There is no conclusive evidence in the record which discloses that any of the yardmen covered by the contracts of the Switchmen's Union questioned or disputed the right of such union to represent them.[10]

[10] While the record shows that the Brotherhood claimed representation authorizations from 479 yardmen on the Michigan Central and 774 yardmen on the New York Central-Lines West, it does not disclose whether

The Switchmen's Union has represented yardmen on the lines now known as New York Central-Lines West, since long prior to December 1914, when the lines were a separate corporate carrier under the name of the Lake Shore and Michigan Southern Railway. Likewise, the Switchmen have had contracts covering the yardmen on the Michigan Central Railroad at Detroit and west since 1909. This was the situation as it existed at the time of the passage of the Act, May 20, 1926, and when it was substantially amended, June 24, 1934. (R. 151-152.)

The services of the Board were invoked by the Brotherhood because of an alleged dispute between the representatives of the Brotherhood and Switchmen's Union as to what constituted the basis for the representation of yardmen employed on the several lines of the New York Central System, under the provisions of the Act. (R. 83, 28, 29, 47-49.) In the proceeding before the Board, the Brotherhood contended that all the yardmen on the New York Central Railroad System should be voted at an election to determine a single representation for such yardmen. (R. 83, 29, 30.) To use the language of the Board (R. 28), the dispute raised by the contention of the Brotherhood was

> whether all of the yardmen together in the service of the Railroad Company should be considered the basis for representation within the meaning of the Act or whether the yardmen should be permitted to continue to designate representatives by separate parts of the Railroad Company substantially as reflected by the agreements covering yardmen in effect between the Switchmen and various component lines or roads of the Railroad Company.

any of these claimed authorizations came from yardmen covered by Switchmen's contracts. In this regard it should be noted that a comparison of the claimed authorizations of the Brotherhood with the votes cast for that organization shows the claims were exaggerated by more than 13 per cent. (R. 35, 49.) *Moreover, the Board did not rely upon the authorizations obtained from yardmen covered by Switchmen's contracts, if any, as basis for asserting its jurisdiction.* (R. 83, 28, 29, 47-49.)

This is the only dispute to which the Board refers. (R. 28, 29, 47-49, 76-81.)

We believe that the term "dispute," as used in the Act, describes a situation where employees are dissatisfied with their own representation—not where they are dissatisfied with the representation received by some group other than their own which is covered by a valid agreement. *A group of employees satisfied with their own representation cannot reasonably be said to have a representation dispute within the meaning of the Act with another group of employees who are satisfied with their representation.*

The language of Section 2, Ninth, supports petitioners' position. It refers to dispute "among * * * *employees*" and directs the Board to certify the individuals or organizations that have been designated to represent "*the employees involved in the dispute.*" (Emphasis ours.)

The real dispute was between two organizations over the question of what constituted the appropriate bargaining unit and we doubt whether it operated to give the Board jurisdiction over all of the yardmen of the New York Central.

A dispute arises out of the claim of one or more employees. No organization can raise a dispute over its rights—for an organization has no rights *per se*. One employee or one hundred employees on the Boston & Albany could not claim to have a dispute as to whether *other* employees on the Michigan Central were properly represented. They could not involve themselves in a dispute raised by another employee over his representation, unless his dispute threatened to *change* their representation.

The Brotherhood had no power to create a dispute but only to represent employees who had a dispute. The Brotherhood had no power to bring into a repre-

sentation dispute employees who had no dispute. Nor had the Board any such power.

If a representation dispute was presented because of the contention of the Brotherhood, it was a dispute as to who was entitled to represent the yardmen on the Michigan Central and New York Central-Lines West, who were then covered by a Switchmen's contract and should have been resolved by an election restricted to the yardmen covered by such contracts. The Board, however, held that the alleged dispute should be determined by an election in which all the employees of the craft, or class, of yardmen in the service of the New York Central Railroad System should be voted. (R. 27-49.) *The Board did not purport to exercise discretion in reaching its decision. The Board said it reached its conclusion as a matter of law and had no discretion in the matter.* (R. 46, 4th and 5th full pars.)

Assuming there was a representation dispute within the meaning of Section 2, Ninth, the question to be decided is whether it was proper for the Board to resolve it by an election in which all the yardmen of the New York Central System were voted.

The major mistake of the Board was in not realizing that its jurisdiction to act depends wholly upon the existence of a dispute "among a carrier's employees," and that in settling such a dispute the Board obtains jurisdiction and can exercise jurisdiction only over the employees *involved* in the dispute. The Board has no arbitrary power to hold that employees working on the Boston & Albany under a contract negotiated by the Brotherhood, who have no dispute whatsoever with the Railroad over their representation, can be made parties to a dispute, if one existed, of employees working on the Michigan Central and New York Central-Lines West, under contracts negotiated by the Switchmen's Union.

When the Act was enacted in 1926 there was a provision giving the employees the right to organize and bargain collectively through representatives of their own choosing, and any interference, influence or coercion by the carrier over the choice of representation was forbidden. But the Act did not provide for action by the Board to hold an election to settle a dispute over representation, nor was there any provision giving the majority of a craft or class of employees the right to determine the representation of the craft or class. By 1934 the need for certain revisions of the Act became apparent and extensive amendments were passed by the Congress and approved June 21, 1934. (48 Stat. 926.) Among these amendments were provisions for action by the Board to settle a dispute over representation; and Section 2, Ninth, expressly created the duty and authority of the Board in this regard.

It provides:

> If any *dispute* shall arise *among a carrier's employees* as to who are the representatives of *such employees*, designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Board, upon request of either *party to the dispute*, to investigate *such* dispute and to certify to both parties in writing within thirty days after the receipt of the invocation of its service, the name or names of the individuals or organizations that have been designated and authorized to represent *the employees involved in the dispute*, and certify the same to the carrier. (Emphasis ours.)

This paragraph further provides that the Board shall be authorized "to take a secret ballot *of the employees involved.*" (Emphasis ours.)

The Board was given no authority to enlarge a dispute to cover employees who are not involved in the

dispute. At the outset it is provided: "If any *dispute* shall arise *among a carrier's employees* as to who are the representatives of *such* employees." Then it is made the duty of the Board to certify the name or names of individuals or organizations "that have been designated and authorized to represent *the employees involved in the dispute.*" Then the Board is authorized to "take a secret ballot of *the employees involved.*" (Emphasis ours.)

The Board attempted to justify its ruling and was sustained by the lower courts, on the basis of Section 2, Fourth, which provides that "the majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act".

The Board and the courts below took the position that the "majority of any craft or class of employees" must mean the majority of all the workers in a particular craft or class who were employed by a single carrier. But we believe that this construction of the Act was not justified because the very language of Section 2, Ninth, authorizing the Board to hold an election, limited the authority of the Board, and limited participation in the election, to the employees "involved in the dispute". It was not only unnecessary but absolutely contrary to fact for the Board to take the position that all the employees of one craft, that is, all yardmen of the New York Central Railroad, were involved in a dispute over representation when there was not the slightest question that, as a matter of fact, a large majority of the yardmen had exactly the representation they desired through the Brotherhood, which no one was disputing. There was, furthermore, no evidence before the Board that any substantial number of yardmen working under the Switchmen's Union contracts were dissatisfied with that representation. How-

ever, if some of these yardmen, members of the Brotherhood, but working under contracts held by the Switchmen's Union, *did* raise a dispute over their representation, then, as a matter of simple fact, no employees would be involved in that dispute except those working under the Switchmen's Union contracts.

The Board and the courts below seem to have assumed that all employees of a particular craft or class who are employed by a single carrier are immediately "involved in the dispute" when any group of such employees desire a change in their representation. But the provision of Section 2, Fourth, is *not* that "the majority of any craft or class of employees" *who are employed by a carrier* "shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act". On the contrary, if we read ahead into Paragraph Ninth, it is evident that the words which are implied, but omitted, in Paragraph Fourth are the following italicized words: "The majority of any craft or class of employees" *who are involved in a dispute* "shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act".[11]

This reasonable construction of the Act, so as to make the provision for an election consistent with the repeatedly declared right of self-organization, is in harmony with the dissenting opinion of Mr. Justice Rutledge. It is unquestionably true, as the dissenting opinion points out, that the Board must decide "who may participate in the election"; and, obviously, "that decision is not to be made arbitrarily or uniformly in all cases without regard to the varying conditions pre-

[11] The opinion of the Court of Appeals appears to concede that the term "craft or class" has no geographical connotation when it states: "We, therefore, deny that Congress intended any geographical or divisional connotation to be given to the term 'craft or class'; it was intended only in the occupational or functional sense and not in the fractional, divisional or regional sense." (R. 174.)

sented". In other words, as we contend, the Board must determine what employees are "involved in the dispute" and, on that basis, decide who may participate in the election.

We think it would be an arbitrary decision if the Board were to hold that all employees of a craft were involved in a dispute over representation despite evidence that the vast majority of the employees was entirely satisfied with, and not involved in any dispute over, their representation. However, we can certainly agree with the dissenting justice that this is a matter for the Board to decide.

If a dispute arises between a carrier and employees who are not covered by an existing contract and who have no existing representation, and if a certain number of employees of a particular craft or class claim to have designated a particular organization as their representative, then the carrier may properly take the position of questioning whether a majority of all the workers of one craft or class who are employed by the carrier desire the representation claimed. Or there may be two or more organizations claiming members of the same craft or class and the carrier may question whether any one organization represents a majority of the craft or class. Under these circumstances there is no collective bargaining unit which has been established by the self-organization of the employees, and the Board may, therefore, properly regard all the workers of the craft or class concerned who are employed by the carrier as "involved in the dispute".

An entirely different situation is presented where there is an existing organization of employees which has a contract with the carrier covering a specific group of employees, and where a dispute arises as to whether the organization holding the contract, or some other organization, is duly authorized to represent the em-

ployees whose rates of pay, rules, and working conditions are fixed in the contract. When such a dispute arises and is presented to the Board, it should be apparent that *the only employees involved* in that dispute are the employees covered by the existing contract.

The Board also argued that its decision was in accordance with the interpretation placed on the statute in its First Annual Report and consistently followed thereafter, and cited authority for the proposition that administrative practice, consistent and generally unchallenged, will not be overturned except for very cogent reasons if the scope of the command is indefinite and doubtful. *Norwegian Nitrogen Products Co. v. United States*, 288 U. S. 294, 315. The policy, however, of the Board in this regard has not been consistent: As pointed out by Justice Rutledge, they have been following two diametrically opposite policies in the administration of the Act. (R. 191, 192.) When there is no disagreement as to the bargaining unit, the Board respects the right of self-organization and determines representation disputes on the basis of the bargaining units established theretofore. When the bargaining unit, however, is a matter of dispute, it has been the practice of the Board to treat the unit as carrier-wide. (R. 41-46.) With respect to the Board's past practice, Justice Rutledge had this to say:

> So long as the employees can organize themselves and do so, without entrenching upon each other's or the public domain, the Act preserves their right and the Board has respected it. That it has done so, in my opinion, is not because it has closed its eyes to the policy of the Act for the reason that its jurisdiction has not been invoked, as would be true if the statute requires carrier-wide units as a matter of law; but is rather because, to this extent, it has observed and followed both the letter and the policy of the law. The statute obviously was not intended

to prescribe two conflicting policies, one for application when the persons affected agree, the other to be applied when they disagree. So to construe it would turn the policy to be applied upon the factor of agreement alone, which of course only would invite disagreement. (R. 191, 192)

The great railroad systems such as the New York Central, Pennsylvania, and the Southern Pacific (to mention only a few) are the product of consolidations of many small railroads. They operate over such vast stretches of territory, involving so many different operating and climatic conditions, that separate operating divisions are inevitable and necessary to efficiency. Some of these are essentially the maintenance of earlier separate companies. Some of them are the results of a later division of managerial powers. But the record of the proceeding before the Board is replete with evidence of the fact that employees may belong to the same craft, but work on different sections of a railroad system, hundreds of miles apart, subject to localized management, dealing with local conditions, working under contracts that, because of local conditions or historical development, vary in their terms and application and that such employees when they work, for example, on the Boston & Albany operating from Albany east, will not be in any real way *involved* in a dispute which may arise on the Michigan Central Railroad or New York Central Lines West.

It would simply be doing violence to the plain meaning of plain words to say that the yardmen members of the Brotherhood operating under a separate contract on the Boston & Albany part of the New York Central System are involved in a dispute that may arise among the yardmen operating under a separate contract negotiated by the Switchmen's Union and maintained with the Michigan Central part of the System. As a

practical matter, the Board could not hold that the Michigan Central yardmen *east* of the Detroit River, the Canadian workers, were *involved* in the dispute. Yet these workers were covered by a contract with the Michigan Central management located in Detroit. As Mr. Walber testified: "So far as the operating department is concerned, the negotiations are conducted on the several portions of the properties." The Boston & Albany yardmen, negotiating with the General Manager of that railroad, might be interested in negotiations between the yardmen and the General Manager of the Michigan Central property in Detroit, but they would not be involved in those negotiations and they could not be *involved* in a dispute over representation of the employees working under and negotiating a separate contract.

The Act was designed to promote industrial peace. It was not passed to encourage labor strife. But the legal ruling announced by the Board would cause serious and nationwide labor disturbances. It constitutes an invitation to the reaching union with the larger membership to absorb and destroy the union with the smaller membership—wherever the present representation of a craft or class of a carrier is shared by two or more organizations. It was not the intention of the Act to penalize smallness and reward bigness in this manner. There is nothing in the legislative history or text of the Act to justify this drastic ruling of the Board.

The election held in which all the yardmen employed by the entire New York Central Railroad System were made eligible to vote to settle alleged disputes in which few, if any, of them were shown to be involved, was an improper election. The Board made an improper certification as the result of such election. Petitioners are entitled to have this invalid action set aside.

IV

THE ACTION OF THE BOARD IN VOTING ALL THE YARDMEN OF THE NEW YORK CENTRAL RAILROAD SYSTEM TO DETERMINE A SINGLE REPRESENTATION CONSTITUTED (a) AN UNLAWFUL LIMITATION UPON THE "FREEDOM OF ASSOCIATION AMONG EMPLOYEES," AND (b) AN UNAUTHORIZED INTERFERENCE WITH THE RIGHT OF EMPLOYEES TO DESIGNATE AND BARGAIN COLLECTIVELY THROUGH REPRESENTATIVES OF THEIR OWN CHOOSING.

1. *The Statute.*

The history of the Act [12] will demonstrate that the Board has acted in violation of the intention of the Congress in the original enactment and amendment of the Act.

The Act as presented to Congress was the joint product of railway management and railway labor. A very large majority of the railway executives, representing a large percentage of the railway mileage, joined with the representatives of all the standard railroad labor organizations in drafting the bill, which was finally enacted into law with practically no change. It was repeatedly urged during the passage of the bill that this joint product should be sanctioned by the Congress (which it was) as the effort of management and labor to work out a program to preserve industrial peace in this vital industry.[13]

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[12] The history of the Railway Labor Act is briefly reviewed in *Order of Ry. Conductors v. National Mediation Board*, 113 F. (2d) 531 (App. D. C.); *Brotherhood of R. R. Trainmen v. National Mediation Board*, 88 F. (2d) 757 (App. D. C.); and *Brotherhood of Ry., etc. v. Nashville, C. & St. L. Ry. Co.*, 94 F. (2d) 97 (C.C.A. 6th). These cases are hereafter discussed in the argument.

[13] House Committee Hearings on H. R. 7180, January 26 and 29, 1926, pp. 9, 107-110, 115-116.

Difficulties in devising a practical program were very great. Among these difficulties was the fact that many of the railroad labor organizations had overlapping jurisdictions; and craft lines were not easily drawn. For example, engineers and firemen were promoted and demoted as traffic fluctuated, so that many members of the firemen's organization worked as engineers, at least part of the time. In the same way, conductors and trainmen moved up and down. The various classes of employees covered by contracts of the clerks' organization had such varied occupations that it would be difficult to draw a craft line covering the jurisdiction of that organization. A station agent might be a telegrapher or he might not be. A train dispatcher might be classified as a "telegrapher". Furthermore, large numbers of railway employees either were not organized at all or were organized in so-called company unions, which were often associations following no craft lines. Some independent organizations were not company-controlled, but were not affiliated with any national bona fide labor organization.

It would have been impractical and probably illegal to have laid down lines of craft or class in the bill, and thereby to compel employees to join or organize limited craft or class organizations in order to exercise rights of collective bargaining. *So the underlying principle written into the Act was the right of self-organization.* This intent was written into Section 2 of the Act, as amended, and provides that one of the general purposes of the Act is

> to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employeees to join a labor organization; * * *.

The same intent is also expressed in Section 2, para-

graphs Third and Fourth, which, in part, read as follows:

> Third. Representatives, for purposes of this Act, shall be designated by the representative parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in his choice of representatives * * *.
>
> Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, * * *.

An employee can join two labor organizations if he wishes, and it is common knowledge that many employees are members of more than one such organization.

The jurisdiction and powers of the employee organizations were not defined in the Act. Representatives might be chosen by "craft or class." Moreover, a class of employees might include workers of more than one craft, or a class of employees might include only a group of the workers of one craft or class. That the jurisdiction, powers, and manner of organization of labor organizations are in no wise limited clearly appears from the proviso to Section 1, Fifth, which reads as follows:

> Provided, however, that no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts

according to which railway employees may be organized by their voluntary action, *nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act* or by the orders of the Commission. (Emphasis ours.)

The provision quoted is a proviso to the definition of the term "employee" and was adopted by the Congress because there were certain employees commonly described as "subordinate officials" who were not really officials, in the sense of being a part of management, but, rather, were essentially employees. To solve this problem the Fifth paragraph of Section 1 was written into the original Act and remains unchanged, which provided for a definition by orders of the Interstate Commerce Commission of the work of employees or subordinate officials. It was immediately apparent, however, that a sweeping power of this character might give the Interstate Commerce Commission authority to interfere with the self-organization of the employees. Therefore, the proviso was added."

The foregoing proviso is peculiarly important in the present case, yet, strange to say, its importance was

"The purpose of its adoption supports the clear meaning of the text, which was explained in the testimony of Mr. Donald Richberg before the House Committee on Interstate and Foreign Commerce, who, as counsel of all the labor organizations, had been one of the principal draftsmen of the bill. After quoting the proviso, Mr. Richberg made the following explanation:

> In other words, even by importing into this Act the orders of the Interstate Commerce Commission and giving it authority in the future to classify occupations, it is specifically provided that that shall not define or affect in any way craft organizations or any other form of organization. Therefore, how the employees are to be represented, in what groups, who are to be their representatives, are all to be determined by the employees themselves, quite regardless of any artificial barriers or boundaries that might be set up in the law. There are no such barriers set up. * * * There is absolutely nothing in this Act that gives any special privilege or aid to an organization except this, and that is if an organization is of the type that the employees themselves want, it will strengthen that organization, because they have a right here to be represented as they see fit. If it is of the type that they do not want, it will weaken the organization. In other words, it must stand on its own merits. (House Committee Hearings on H. R. 7180, January 26, 27, 1926, p. 64.)

apparently overlooked in the consideration of this matter by the Board. The Switchmen's Union, as it was organized long prior to the passage of the Act and as it existed at the time of the passage of the Act, organized employees essentially by yards rather than by a railroad system or an operating division. Yard service is a local service, employees being particularly interested in local conditions, whereas other transportation employees, engineers, firemen, conductors, and trainmen work over an operating division of a railroad. Yardmen working for the Michigan Central, before it became a part of the New York Central System and after it became a part, had comparatively little interest in yard service in other sections of the country, except as any labor organization is interested in wages and working conditions for its class of labor, whether working on the same railroad system or on another railroad.

The practical effect of the ruling of the Board is to deny to railroad employees the right to maintain an organization on a railroad and to hold a contract covering a portion of a railroad system unless that organization desires and is able to extend its membership over the entire system, so that it can at all times command a majority vote of all employees doing similar work.

That the ruling of the Board, if sustained in law, will have far-reaching consequences of a most serious character, by interfering with long-established custom and precedent in railway organization and representation, is made graphically certain from the testimony of Vice-President Walber of the New York Central System. He recites a long list of agreements covering practically all railroad employments. He points out that practically all the organizations of railway labor have *separate* agreements in effect on different parts of the New York Central System. *In many instances more*

than one organization represents the same class of employees in different parts of the system. For example, agreements covering the work of train dispatchers include separate agreements with the American Train Dispatchers Association on the Boston & Albany, the New York Central and the C. C. C. & St. L. Railway, whereas an agreement covering this same work on the Michigan Central is with the Order of Railroad Telegraphers. The work of yardmasters is covered by agreements on the New York Central, excepting Ohio Central Lines, and on the Michigan Central Railroad, which were made with the Railroad Yardmasters of North America. On the C. C. C. & St. L. Railway there is an agreement in effect with the Big Four System Yardmasters Association. On the Ohio Central Lines the Brotherhood of Railroad Trainmen represents the yardmasters. (R. 148-155.)

Mr. Walber also points out that "In the engine and train service organizations the general practice is to have committees cover territories co-extensive with the jurisdiction of General Managers, and the prevailing practice has been to have separate agreements co-extensive in scope with the jurisdiction of General Managers. Each agreement contains certain provisions peculiar to the territory covered thereby." (R. 150.)

The conditions on the New York Central, as to employee organizations and agreements, are typical of those prevailing throughout the United States on the great railroad systems such as Pennsylvania, Baltimore & Ohio, Southern Railway, Southern Pacific, Atchison, Topeka & Santa Fe, Chicago, Milwaukee & St. Paul, etc., etc. The effect of the ruling of the Board is to destroy a valuable right of self-organization of the employees. To maintain their agreements their organizations will be compelled to create or maintain an organization covering an entire railroad system so that

they can at all times obtain a majority vote of all employees of one craft in support of their representation. The inevitable effect will be the gradual extinguishment of many smaller organizations and the forcing of the handling of all labor relations on a large scale basis.

Whether the Congress could write a law classifying railroad employments and compelling all employees of a railroad system of one class to vote for representation through one organization is a serious question. But there is no doubt that up to date the Congress has not written any such laws; and the employees and their organizations, who are jointly responsible for railroad management for the provisions of the present law, never asked the Congress to write such a law. A large number of them intervened in the proceedings before the Board in the present case, objecting to the distortion of the law by the Board in attempting to exercise an authority never conferred upon that Board.[*]

2. *The Cases.*

The decision of the Court of Appeals in this case is in conflict with other decisions of this and another Court of Appeals. It has been consistently held heretofore that the underlying principle written into the Railway Labor Act was the right of self-organization.

In the case of *Brotherhood of R. R. Trainmen v. National M. Board*, 88 F. (2d) 757 (App. D. C.), which involved a dispute on the Norfolk & Western Railway as to the representative of the road conductors, the Board limited the eligible voters to the regularly

[*] The Board argued, and the majority of the Court of Appeals agreed, that the legislative history as shown by the statements of Commissioner Eastman to the Congressional Committees in explanation of the 1934 amendments, justified the Board's position. (R. 178) We submit, however, that such inferences as may be drawn from these statements cannot prevail against the many other opposite inferences of compelling nature which must be drawn from the legislative history—and we refer the Court to the full discussion on this point contained in the dissenting opinion. (R. 183-193)

assigned conductors and eliminated the brakemen, who to some extent were employed as conductors during seasonal rushes. The brakemen, represented by the Brotherhood, claimed the right to vote for the representation of conductors. This claim was denied by the Board, and the Order of Railway Conductors won the election on the vote of the regularly assigned conductors. The Court held in part as follows:

> The general purpose of the Labor Act was to promote peaceful and conciliatory consideration of labor disputes, and especially to secure the right of collective bargaining through a representative chosen by a majority of the employees in a particular craft or class. It is not going too far to say that the basic and underlying purpose of the Act was to insure representation *in accordance with the established custom* to those employees *whose interests are involved*. But the Act leaves uncertain the precise or exact meaning of the words "class or craft", and we think obviously for the reason that it was intended by Congress to adopt the designation of class or craft as determined by the *then current working agreement* between the Railroad and particular groups or classes of its employees. (Emphasis ours.)

The Court then cited and discussed Section 2, Seventh:

> We think it is obvious that how classes are to be formed and who shall compose them are matters left *to the employees themselves*, and so we think that by reference to the terms of the working agreement which the employees have made, is to be found at least some evidence of who are members of the class or craft covered by the agreement. The Board also recognizes that this is a criterion, for in its First Annual Report to Congress, after noting that the Act does not give it authority to define the crafts or classes, it says: "So far as possible the Board has followed the past practice of the employees *in grouping themselves* for representation

purposes and of the carrier *in making agreements* with such representatives." (Emphasis ours.)

The Court discussed the inclusion of ineligible employees in agreements and the haziness of the distinction drawn by the Board, and stated:

> In addition to this, it is charged in the Bill that the Board declined and refused to inform appellants of the facts upon which the Board based or made its designation or rule as to who were eligible to participate in the election on the grounds that this information was obtained through its examiner and should not be divulged. This, in our opinion, was wrong, for as was said by Mr. Justice Brandeis in *United States v. Abilene & S. R. Co.*, 265 U. S. 274, 288, 44 S. Ct. 565, 68 L. Ed. 1016, "Nothing can be treated as evidence which is not introduced as such."
>
> * * * But, as we have seen, the intent of Congress, in leaving undefined by the Act the personnel of the class authorized to choose a representative, was to adopt and confirm the grouping *as it then was recognized and established by mutual agreement of employees and carrier.* (Emphasis ours.)

So the case was remanded.

In *Brotherhood of Ry., Etc., v. Nashville, C. & St. L. Ry.*, 94 F. (2d) 97, decided in 1937 by the United States Circuit Court of Appeals for the 6th Circuit, there was a dispute over whether two classes of so-called "clerks" should be voted separately or jointly. There was a class of station clerks who had been organized for many years and had an agreement with the carrier. In 1934 the Brotherhood organized other classes of station workers and also some of the clerical employees. The Board voted the clerical employees and the other employees separately; and the clerical employees favored their own association by a majority vote, whereas the

other employees voted for the Brotherhood. The total of both ballots would have given a majority to the Brotherhood.

The Brotherhood sued for a mandatory injunction to compel the carrier to treat with it as the designated representative of *both* classes of employees. The relief was denied and the Circuit Court of Appeals affirmed the decision. The Court held that the intent of the Act was to preserve existing craft and classes of employees as units for collective bargaining, citing Section 1, Fifth, and Section 2, Fourth, and holding in part as follows:

> The terms "craft" or "class" are not defined. It is fair inference that the *Congress intended that collective bargaining groups already constituted and functioning were to be recognized*, and it is likewise fair inference that the terms were left sufficiently elastic to meet not only changing conditions but also varying existing conditions among the employees of carriers differing greatly in size, number of employees, intensiveness of their organization, and differences in its origin, scope, and development. (Emphasis ours.)

The Court held that the existence or non-existence of a distinct class or craft, as among the railroad's employees, was a question of fact, and the Board's conclusion that a craft does or does not exist was the finding of an ultimate fact, which must be supported by the evidentiary facts and the question as to whether substantial supporting evidence exists is one of law.

> Our analysis of the evidence indicates that the facts found (by the District Court) are fully supported by the proofs, and our consideration of the terms of the statute and its inherent design compels the conclusion that it *neither authorizes nor encourages nor commands the type of gerrymandering* that must inevitably follow the enforcement

of a certification which ignores the basic facts of *historical development*, similarity of employment, community of interest, and *well-defined group choice*. (Emphasis ours.)

We submit that the sentence last quoted applies with great force to the present situation, and it should be held in this case that the Act does not authorize or encourage or command the "type of gerrymandering" that was practiced to the detriment of the yardmen who were represented by the Switchmen's Union.

The *third case* is *Order of Ry. Conductors v. National Mediation Board*, 113 F. (2d) 581, decided in 1940 by the United States Court of Appeals for the District of Columbia. This was a suit by the Order of Railway Conductors to set aside a Board certification that the Brotherhood was entitled to represent yardmen on the Pittsburgh & Lake Erie. The District Court sustained the finding of the Board that yard conductors were a part of the craft or class of yardmen, and the judgment of the District Court was sustained on appeal.

This Court pointed out that the Act was intended not merely to protect independence and the right to organize, but also to settle disputes and to avoid interruptions, holding:

> Accordingly it aims not to compel the creation of new craft or class lines but to recognize the lines which are drawn in the industry.

The Court held that groups that have chosen to bargain as units may do so, and this is emphasized by the use of the broad term "craft or class" instead of the narrow term "craft". The Court finally cited the proviso of Section 1, Fifth, in the following language:

> The Railway Labor Act provides that "no occupational classification made by order of the Interstate Commerce Commission shall be construed to

define the crafts according to which railway employees may be organized by their voluntary action."

The reasoning of the foregoing opinion is directly applicable to the present situation. Throughout the railroad industry the organizations have consistently carried on collective bargaining, not only with single carriers but also with managerial divisions of a railroad system, and with parts of a system that once were, or remained, separate operating entities.[16]

The ruling of the Board in the present case does not aim to preserve existing conditions and existing labor relations and existing contracts, but will inevitably have the effect of disrupting existing conditions, relations and contracts. It will compel a chaos of reorganization, in which a labor organization, in order to survive, will be compelled to extend its jurisdiction over the entirety of any railroad or railroad system, which the Board may define as a single carrier. Railroad labor organizations will not be permitted longer to maintain separate contracts to cover different operating conditions, unless they have the numerical strength sufficient to enable them to write *all* the contracts covering *all* employees of one craft or class on the railroad.

The majority of the Court sought to distinguish these cases on the ground that they relate to the occupational rather than the geographical scope of the craft or class. We submit, however, that this distinction is untenable as shown by the reasoning in the dissenting opinion.

The dissenting opinion in expressing the position of appellants, petitioners here, stated that it "freezes rail-

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[16] See also *Brotherhood of R. R. Trainmen v. National Mediation Board*, 135 F.(2d) 780 (App. D. C.), decided the same day as the case at bar. Here the Court of Appeals, in an inconsistent ruling, upheld a ruling of the Board that no dispute within the meaning of the Act was involved where there was no question as to who is the representative of the craft or class.

way labor in the contractual mould of 1934". (R. 181, 182.) Acceptance of petitioners' position would not result in so static a situation. Petitioners contend that employees should be permitted to establish the bargaining unit in the exercise of their right of self-organization. Thus, whenever a group of employees covered by a contract desire to change their bargaining unit and combine with some larger unit, they may do so if a majority of the employees involved desire to make the change.

The ruling of the Board denies to the employees the right to organize themselves in local units for collective bargaining. It denies them the right to maintain existing contracts and labor relationships which antedate the enactment of the Act, and which are acceptable alike to the great mass of railway employees and to practically all railroad managers. The action of the Board, however well intentioned, was in fact the arbitrary assumption of a power and authority not granted to the Board by the act of its creation, and in violation of Section 1, Fifth, and Section 2, Fourth, (See *Brotherhood, etc., v. Nashville C. & St. L. Ry., supra.*)

CONCLUSION

We submit that the judgments of the lower courts should be reversed and the cause remanded to the District Court, with instructions to grant the relief prayed for in paragraphs 7 and 8 of the bill of complaint.

Respectfully submitted,

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APPENDIX

Excerpts from the Railway Labor Act

(Act of May 20, 1926, as amended by the Act of June 21, 1934, 45 U.S.C. 151-163)

TITLE I

DEFINITIONS

SECTION 1. When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any express company, sleeping car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided, however,* That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

* * * * * * *

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

* * * * * * *

GENERAL PURPOSES

SECTION 2. (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly

settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

GENERAL DUTIES

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall

be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

* * * * * * *

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to

the carrier. Upon receipt of such certification the carrier shall treat with the representatives so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 937

SWITCHMEN'S UNION OF NORTH AMERICA, ET AL.,
PETITIONERS
v.
NATIONAL MEDIATION BOARD, GEORGE A. COOK, WILLIAM M. LEISERSON AND HARRY H. SCHWARTZ, AND BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

MEMORANDUM FOR THE RESPONDENTS NATIONAL MEDIATION BOARD, GEORGE A. COOK, WILLIAM M. LEISERSON AND HARRY H. SCHWARTZ

OPINIONS BELOW

The district court rendered no opinion; its findings of fact and conclusion of law are set forth at R. 86–92. The opinions of the Court of Appeals for the District of Columbia (R. 180–201) are not yet reported.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia was entered on February 15, 1943 (R. 202). The petition for certiorari was filed on April 16, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended.

QUESTION PRESENTED

Whether under the Railway Labor Act all the employees of a carrier engaged in the same occupation must be treated as members of a single craft or class for purposes of collective bargaining, or whether they can or must be broken up into separate geographical units in accordance with their prior agreements with the carrier.

STATUTE INVOLVED

The statute involved is the Railway Labor Act, as amended in 1934, 48 Stat. 1185, 45 U. S. C., Section 151, *et seq.* The pertinent provisions of the Act are printed as an appendix to the petition.

STATEMENT

The New York Central Railroad Company was created through a consolidation in 1914 of the New York Central and Hudson River Railroad and the Lake Shore and Michigan Southern Railway, operating lines from New York City to Chicago. The portion east of Buffalo has since been known as New York Central Lines—East, and

the portion west of Buffalo as New York Central Lines—West. The New York Central Railroad Company also has leased lines previously operated by other railroad companies (most of which are its subsidiaries), and operates them. The lines so operated are the Boston and Albany, the Cleveland, Cincinnati, Chicago, and St. Louis (Big Four), the Michigan Central, and the Toledo and Ohio Central (R. 38–39, 87–88).

On July 2, 1940, the Brotherhood of Railroad Trainmen (hereinafter referred to as B. R. T.) invoked the services of the National Mediation Board to investigate a representation dispute among the yardmen of the New York Central Railroad Company (R. 31–32, 87). With its application, B. R. T. presented to the Board signed authorizations from 4,749 out of approximately 6,087 yardmen then employed by the Company (R. 40–41, 91, 154–155). At that time the Switchmen's Union represented yardmen in all yards on the Michigan Central Lines west of the Detroit River,[1] and in all but nine yards of the New York Central Lines—West (R. 90, 110). The B. R. T. represented the yardmen on the remainder of the lines operated by the New York Central Railroad Company (*ibid.*).

The Brotherhood claimed that all the yardmen on the New York Central constituted a single craft or class within the meaning of the Act, and

[1] The portion of the lines east of the Detroit River is in Canada.

that since a majority of this craft or class desired to be represented by it, it should be certified as the representative (R. 33, 91). The Switchmen's Union, on the other hand, insisted that it was the representative of the yardmen on the Michigan Central and portions of Lines—West, that these properties constituted separate carriers, and that the yardmen on these properties formed separate crafts or classes, not part of a larger craft covering the entire railroad (R. 34, 35, 91).

The Board investigated, and after finding that the parties were unable to agree, concluded that a dispute existed and set the matter for hearing in order to determine the basis upon which to conduct an election among the employees involved (R. 32–33, 87, 95). Evidence was taken and briefs filed. The Board found that the Michigan Central and Lines—West were not separate carriers, but were part of the properties operated by the New York Central Company as a single carrier. The Board concluded "as a matter of law that the Railway Labor Act vests the Board with no discretion to split a single carrier * * * for the purpose of determining who shall be eligible to vote for a representative of a craft or class of employees * * *" (R. 53). Accordingly, the Board ordered an election to be held among all the yardmen employed by the New York Central Railroad Company (R. 53–54). Of 7,187 employees eligible to vote, 4,112 voted for the B. R. T. and 941 for the Switchmen's Union (R. 56).

The Board thereupon, on April 24, 1942, certified the B. R. T. as the representative of the craft or class of yardmen employed by the New York Central Railroad Company (R. 54–57). The Switchmen's Union and some of its members, petitioners herein, are suing to have the Board's certification set aside and to enjoin the Board from combining the yardmen employed on New York Central Lines—West and the Michigan Central with other yardmen employed by the New York Central Railroad as a single craft or class.

The district court and the Court of Appeals upheld the Board's determination. Mr. Justice Rutledge dissented from the decision of the latter court. Although he rejected petitioners' contentions, he was of the view that the Board had discretion to determine whether the craft or class bargaining unit was carrier-wide in the particular case, and that there was no rule of law justifying the Board's refusal to exercise its discretion here.

DISCUSSION

Petitioners seem to have abandoned their contention that there was no substantial evidence in the record to support the Board's finding that all the divisions of the New York Central were operated as a single railroad.[2] That leaves as the

[2] The district court held this finding to be "supported both by substantial evidence and the weight of the evidence" (R. 92). The Court of Appeals held it to be "a very reasonable conclusion" (R. 187). Mr. Justice Rutledge concurred on this point (R. 194).

issue to be determined whether the Act *requires* that a craft or class be carrier-wide. We agree with petitioners that this issue is important.[3]

The majority of the court below accepted the Board's contention that Congress intended that a carrier treat with only one representative from each craft or class of its employees, and that this meant that there was to be only one representative for all of the employees of the carrier performing the same type of work. The committee reports and congressional debates are silent on this precise point, but both Coordinator of Transportation Eastman, who explained the bill to the congressional committees, and the representatives of the carriers who opposed the bill in committee concurred in their understanding that the words "craft or class" had the meaning which the Board has attributed to them.[4]

Mr. Justice Rutledge was of the opinion that the Act should be construed so as to permit the Board to exercise judgment and discretion in determining whether in a particular case the craft or class unit should be carrier-wide or limited to a subdivision of a carrier. This, however, does not appear to be petitioner's position.

To the extent that petitioners' argument is that all New York Central yardmen are not "involved

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[3] We do not agree that the decision below is in conflict with the cases cited on pp. 8, 11–16 of the petition. None of those decisions involved the present problem. See p. 8, *infra*.

[4] The pertinent excerpts from the testimony before the committees are printed in the opinion below (R. 191–193).

in the dispute" within the meaning of Section 2, Ninth (Pet. 6–7, 18–19), it begs the question. No one doubts, of course, that the Board's authority extends only to the employees "involved" in a dispute. But the Act provides (Sections 2, Fourth, and Ninth) that representatives are to be chosen by the majority of a craft or class, and obviously all the members of such a bargaining unit are involved in a dispute as to its representation. This is true even if separate portions of the same craft each unanimously favor a different representative.[5] Accordingly, if all the yardmen employed by the New York Central Railroad constitute a single craft or class, it is immaterial that a dispute may not exist among employees of the separate divisions. Petitioners' argument that the men on some of the divisions are not "involved" assumes that each division constitutes a separate bargaining unit, and plainly can have no foundation otherwise. Whether or not that is so is precisely the issue to be decided.

If petitioners' contention is that the Board is bound to follow the grouping established in contracts existing when the Act was passed, it seems obviously unsound, as both the majority (R. 187–189) and the minority (R. 194) of the Court of

[5] If the employees at one end of a shop or yard (assuming a carrier with only one shop or yard) unanimously favored a particular labor organization, and those at the other end another union, it certainly could not be contended that there was no dispute as to the representation of the shopmen or yardmen, or that all the men at both ends of the shop or yard were not "involved."

Appeals held. The words "craft or class" have no such connotation. The cases which petitioners cite for this proposition hold only that the prior agreements on the particular property are among the factors to be considered by the Board in determining the functional or occupational limits of the craft or class unit.[6] This has been the position of the Board itself since the issuance of its First Annual Report in 1935 (p. 20).[7]

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

ROBERT L. STERN,
Attorney.

MAY 1943.

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[6] *Brotherhood of Railway and Steamship Clerks* v. *Nashville C. & St. L. Ry. Co.*, 94 F. (2d) 97 (C. C. A. 6); *Brotherhood of Railroad Trainmen* v. *National Mediation Board*, 88 F. (2d) 757 (App. D. C.); *Order of Railway Conductors* v. *National Mediation Board*, 113 F. (2d) 531 (App. D. C.).

[7] Because it thought the Act required otherwise (see p. 6, *supra*), the Board has not applied this principle to the geographical limitation upon the scope of a craft or class but only to the occupational limitation.

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No. 937 48

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

SWITCHMEN'S UNION OF NORTH AMERICA, ET AL.,
Petitioners,

v.

NATIONAL MEDIATION BOARD, GEORGE A. COOK, WILLIAM M. LEISERSON AND HARRY H. SCHWARTZ, AND BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF FOR RESPONDENT BROTHERHOOD OF RAILROAD TRAINMEN IN OPPOSITION.

BERNARD M. SAVAGE, ESQ.,
ALFRED L. BENNETT, ESQ.,
Attorneys for Respondent,
Brotherhood of Railroad Trainmen.

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OPINIONS BELOW.

The district court rendered no opinion; its findings of fact and conclusions of law are set forth at R. 86-92. The opinions of the Court of Appeals for the District of Columbia are not yet reported but will be found at R. 180-201.

JURISDICTION.

The judgment of the Court of Appeals for the District of Columbia was entered on February 15, 1943, and the petition for certiorari was filed by the petitioners on April 16, 1943. The jurisdiction of this Court is invoked by them

under sections 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. (28 U. S. C. 347.)

QUESTION PRESENTED.

Whether under the Railway Labor Act, in the event of a dispute as to representation, the National Mediation Board can, as a matter of discretion, break down the class or craft of yardmen within a carrier (there being no dispute as to the functions or occupational work of yardmen), into geographical segments or units for the purpose of making separate bargaining units of each segment or unit, after the Board has found, as a matter of discretion, that the carrier consists of all of these segments or units.

STATUTE INVOLVED.

The statute involved is the Railway Labor Act as amended in 1934, 48 Stat. 1185, 45 U. S. C., Sections 151, et seq., the pertinent sections of which are set forth in the appendix to the petition.

STATEMENT OF THE MATTER.

This is covered in the majority opinion of the Court of Appeals and the brief of the Mediation Board and is not here repeated.

There is, however, some inaccuracy in the petitioners' statement of the matter on page 3:

> "2. That there was no evidence that any specific number of yardmen covered by the Switchmen's Union contracts desired any different representation and that, therefore, there was no basis for holding an election."

Mr. Robinson, General Chairman, Brotherhood of Railroad Trainmen testified (R. 139) before the Board that there had been a dispute in January, 1940; that he received a petition addressed to him from 38 yardmen of the former Michigan Central at Toledo, Ohio, out of a roster of 56 men, requesting representation by him because they were denied

the right of having a local committee by the Switchmen's Union. He further testified (R. 140) that 700 employees in train service, yard service and engine service and among the carmen at Detroit had filed a petition to the C.I.O. for representation.

The records of the Mediation Board (R. 41) shows that 479 yardmen on the former Michigan Central and 774 yardmen on the former New York Central—Lines West signed representation authorizations for Brotherhood of Railroad Trainmen representation, both of which lines were covered by Switchmen's contracts, with the exception of nine yards on the New York Central, Lines West.

ARGUMENT.

The petitioners, apparently have abandoned their position that the Board erred in holding that all the segments and divisions of the New York Central Railroad were operated as a single carrier.

The remaining question presented is whether under the Railway Labor Act, in the event of a dispute as to representation, the National Mediation Board can, as a matter of discretion, break down the class or craft of yardmen within a carrier (there being no dispute as to the functions or occupational work of yardmen), into geographical segments or units for the purpose of making separate bargaining units of each segment or unit, after the Board has found, as a matter of discretion, that the carrier consists of all of these segments or units.

It is denied that the decision of the Court of Appeals is in conflict with other decisions of this or any other Court of Appeals. The case of *Brotherhood of Railroad Trainmen v. National Mediation Board*, 88 F. (2d) 757, App. D. C. decided in December, 1936, principally relied upon by the petitioners, as indicating a conflict, did not deal with the question presented here, the issue in that case being whether or not brakemen whom, the evidence showed spent the major portion of their time as road conductors, were eligible to vote as conductors for representation. The quotation of

parts of the court's opinion on page 11 of the petitioner's brief does not sustain the petitioner's position.

The "then current working agreement" referred to by the court obviously refers to the agreement in a functional or occupational sense rather than in a geographical one since the latter question was in no way involved in this case. That the working agreement is not to be all controlling is found in the court's statement "* * * and so we think that by reference to the terms of the working agreement which the employees have made, is to be found at least *some evidence* of who are members of the class or craft covered by the agreement." (Italics Supplied)

In order to determine whether or not employees are involved in a dispute it is first necessary to determine who the employees are, which is very forcefully pointed out in the majority opinion of the Court of Appeals (R. 193):

> "It is doubtlessly arguable that divisional autonomy will afford a larger number of the 6,087 yardmen the representative of their choice. If each yard were voted separately, however, more yet of the yardmen would be accommodated, and if each section of each yard were given a separate representation, still more would have their choice, and so on, until it would be possible to make the units minute enough to give all 6,087 the representative that they wished. However, this is not the purpose or design of the Act. The Act was created to furnish a procedure whereby the employees of a particular craft or class could attain a representation by the organization which the *majority* of that craft or class desired. The larger the number in the class, the more possible dissidents. The larger the class, however, perhaps the more desirable that the employer be able to deal with a single representative, and the more necessary a single contract for effective collective bargaining."

Likewise the case of *O. R. C.* v. *National Mediation Board*, 113 F. (2d) 531, App. D. C. decided in June, 1940, is not authority for the "conflict" claimed by the petitioners because in this case the court was dealing with the question

of whether or not the Board was arbitrary and capricious in determining that yard conductors and yard brakemen or helpers and switchtenders constituted the craft of yardmen, the court holding that the Board was not arbitrary and capricious, in view of the fact that the employees themselves had agreed this group was embraced in the term "yardmen". The term "class" is considered by the court on page 534, as referring to various occupational groups and nowhere does this decision refer to class or craft as co-extensive with geographical subdivisions.

It is stated by the petitioners that in the present case the court upheld a ruling of the board which would destroy existing contractual relations "* * * and prevent an organization which had represented a particular class of yardmen for many years prior to and since the adoption of the Act, from continuing to represent these employees * * *". This contention seems logically answered by the majority opinion of the Court of Appeals (R. 187). "Appellants cannot complain of interference with their contract if the provision is a lawful exercise of Congressional authority. Their contracts were necessarily made subject to that authority. It is an established principle that appellants must be considered to have made their contracts in contemplation of the contingency that they might be invalidated by a proper exercise of legislative power".[1]

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[1] *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241; *Semler* v. *Oregon State Board of Dental Examiners*, 294 U. S. 608, 610; *Sproles* v. *Binford*, 286 U. S. 374, 390; *Union Dry Goods Co.* v. *Georgia Public Service Corp.*, 248 U. S. 372, 375.

In *Franklin* v. *Pennsylvania-Reading Seashore Lines*, 122 N. J. Eq. 205, 193 Atl. 712, 718, rosters of seniority, priority, and the positions of employees were consolidated after the unification of two railroads. The complaining employee representative raised the question that a contract existed between the men and the railroad by which they had protected seniority rights because of employment upon the former separate lines. The court held:

> ". . . . It would seem that such rights as existed respecting the former railroads ceased upon the men becoming employees of the defendant railroad company. . . . ."

The petitioners state (brief, page 13) "no one is authorized under the Act to require the Switchmen's Union to extend its membership over the thousands of miles comprehended in the New York Central System in order that it may be permitted to continue to represent yardmen on those portions of the system where this union has been long organized". The Mediation Board's certification does not cover the New York Central *System* but covers the New York Central *Railroad*. The latter did not include those four roads owned but not operated by the New York Central Railroad. The difference between "railroad" and "system" was pointed out in the Circuit Court of Appeals' opinion (R. 186-187).

Petitioner's brief, page 14, states: "Vice President Walber of the New York Central testified that for the craft of train dispatchers the Boston & Albany, New York Central and Big Four had agreements with the American Train Dispatchers Association. But on the Michigan Central the dispatchers agreement was with the Order of Railway Telegraphers". It thus appears that the first three subdivisions of the New York Central Railroad has *one* representative for the craft of train dispatchers. He stated further (R. 168) "When it becomes necessary to negotiate changes in the New York Central agreements, special arrangements are usually made for the *joint* handling for the New York Central Railroad and Big Four." Mr. Walber further testified (R. 167); that the New York Central Railroad had *one* contract on the entire system affecting dining car stewards[2] and are endeavoring to negotiate a uniform contract covering cooks and waiters.

The wisdom of unifying contracts was also recognized by the Pennsylvania Railroad which has one contract covering *all* yardmen and trainmen for the entire system. This contract had its inception in 1920 and in 1937 both the management and the Board refused to change the arrangement (R. 115).

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[2] In the matter of the Representation of Employees of the New York Central Railroad System (Dining Car Stewards) case, R. 263.

The case of *Brotherhood of Railway & Steamship Clerks v. N. C. & St. L. Ry.*, 94 F. (2d) 97, C. C. A. 6th, decided December, 1937, cited by petitioner, brief page 15, likewise does not show the conflict claimed, nor are the issues in that case parallel to the issues in the present case as claimed. The court, in this situation, was dealing only with the question of whether or not employees who performed labor work are to be included under the craft of clerks. No where did the court deal with the geographical area to be encompassed by the term "class or craft", but these terms were dealt with solely in the occupational or functional sense.

The case of *Brotherhood of Railroad Trainmen v. National Mediation Board*, No. 8311 (not yet reported) decided by the Court of Appeals (D. C.) on February 15, 1943, the same day as the instant case, is not in any degree inconsistent as claimed in that case. The Court stated at page 4: "The Board, we think properly held, indeed the fact is admitted, that there is here no dispute as to who is the representative of any craft or class. It is perfectly clear that such dispute as exists is whether particular work is to be done by employees within one craft or class or another. And the Board's authority to determine who is the representatives of a craft or class does not include authority to define the type of work that each craft or class must do. This, in substance, is what we held in *Brotherhood v. Board*, 66 App. D. C. 375, 88 F. (2d) 757."

The "Misconstruction of the Railway Labor Act", claimed by the petitioners (Brief 16) does not seem apparent but indicates, we believe, instead, a misconstruction on the petitioner's part, of the Railway Labor Act. The Brotherhood of Railroad Trainmen submitted 4749 authorizations to the Mediation Board, together with its invocation. 4112 yardmen of the New York Central Railroad, out of 5260 casting ballots, voted for Brotherhood of Railroad Trainmen representation, 941 voting for the Switchmen's Union of North America. To deny to this over-

whelming majority a representative of their own choosing would plainly be to defeat the purpose of the Railway Labor Act. It is conceivable that, if the New York Central were broken down into minute units, a larger proportion could have a representative of their own choosing but this would be contrary to the understanding of the Act by both those who favored and opposed it.[3]

The majority opinion in the instant case (R. 190), very clearly shows the contrast between the National Labor Relations Act, where the Board is given the express authority for the purpose of collective bargaining, to decide whether: "* * * the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof, * * *".[4]

---

[3] Mr. Joseph B. Eastman, author of the 1934 amendments to the Railway Labor Act, explained them to the Congressional Committees and in reply to a question by a member of the Committee he testified on this precise point as follows (House Hearings, p. 57):

> Mr. Huddleston. For illustration let us take the case we will say, of the machinists at a given shop when there are other machinists employed at other shops. Would these machinists at that particular shop be able to get together under this sentence and bargain with their employer?
>
> Commissioner Eastman: Well, my understanding of the way in which the words "craft" or "class" have been defined in the past, is that they would cover the entire service of any particular carrier. That is, it would not be a class of employees, to pick out those that did work in a particular shop, but it would be all of the employees of the carrier, no matter in what shop they were located who did that particular kind of work.
>
> Mr. Huddleston. For that particular employer?
>
> Commissioner Eastman. Yes, for that particular employer.

Hearings before House Committee on Interstate and Foreign Commerce on H. R. 7650, Railway Labor Act Amendments, 73d Cong. 2d Sess., pp. 15-65, and Hearings before the Senate Committee on Interstate Commerce on S. 3266, to amend the Railway Labor Act, 73d Cong. 2d Sess., pp. 9-26, 145-160.

[4] National Labor Relations Act (29 U. S. C. A. Section 159).

Nowhere in the Railway Labor Act is any such authority given and we respectfully submit no such discretion was intended.

The implication of the petitioners' brief is that the present decision of the Board, the District Court and the Court of Appeals is at variance with the past practice and previous decisions of the Board; that the denial of certiorari by this Court would result in a radical departure from the existing practice in holding, when the issue is raised, that crafts or class must be polled on a carrier wide basis. This implication is not a fact. The record will show that in all cases where there was any objection to dividing a carrier into separate bargaining units for one craft by any of the parties interested in a representation dispute, the vote was conducted on a carrier-wide basis. (R. 46-52.) Every single argument that the petitioners attempt to make on page 20 of their brief entitled "Public Importance of the Issues," applies with equal force against the new interpretation asked by them. The petitioners argue on page 20, under heading No. III: "Public Importance of the Issues," inter alia, that the efficiency and safety of railroad transportation depends in considerable measure upon the maintenance of satisfactory and harmonious relations between employer and employee. With this we heartily agree, as well as all propositions cited by them under sub-headings 1, 2, 3 and 4; all of which, it seems to us, is a most potent argument for leaving undisturbed

1. The construction placed upon the 1934 amendments by Joseph B. Eastman, then Federal Coordinator of Transportation, who drew them.
2. The interpretation of the sections in question by both those who favored and opposed them at the various committee hearings.
3. The interpretation of the Board both by its decisions and in its first annual report. (R. 46-47)
4. The affirmance of the Board's position by the District Court and the Court of Appeals for the District of Columbia.

The petitioners have not cited a single case, nor do we know of any, which support the proposition that "craft" or "class" should be given the geographical or territorial interpretation claimed.

The present case becomes important only if the contentions of the petitioners have merit.

CONCLUSION.

The judgment below was clearly right; the majority opinion of the Court of Appeals, in a most detailed, logical and learned opinion, refutes the petitioner's various contentions (as indeed does the minority opinion on many grounds) and therefore, this respondent has not attempted, at this time, to present an adequate argument on the merits. It is respectfully submitted that no useful purpose could be served by granting certiorari to review the opinion of the Court of Appeals for the District of Columbia in this case and the petition should be denied.

Respectfully submitted,

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Section 13 (a), 29 U. S. C., § 113 (a) 16

Section 13 (c), 29 U. S. C., § 113 (c) 16

Railway Labor Act, as amended, 48 Stat. 1185, 45 U. S. C., § 151, *et seq.*:

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Miscellaneous:

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Hearings before House Committee on Interstate and Foreign Commerce on H. R. 7650, Railway Labor Act Amendments, 73d Cong., 2d sess. 33, 34, 35, 36, 50

Hearings before the Senate Committee on Interstate Commerce on S. 3266, to amend the Railway Labor Act, 73d Cong., 2d sess. 33, 47, 50

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H. Rept. No. 1944, 73d Cong., 2d sess. 47

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 48

SWITCHMEN'S UNION OF NORTH AMERICA ET AL., PETITIONERS

v.

NATIONAL MEDIATION BOARD, GEORGE A. COOK, WILLIAM M. LEISERSON, AND HARRY H. SCHWARTZ, AND BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENTS NATIONAL MEDIATION BOARD, GEORGE A. COOK, WILLIAM M. LEISERSON, AND HARRY H. SCHWARTZ

OPINIONS BELOW

The district court rendered no opinion; its findings of fact and conclusions of law are found at R. 76–81. The opinions of the United States Court of Appeals for the District of Columbia (R. 160–193) are reported at 135 F. (2d) 785.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia was entered on February 15, 1943 (R. 193). The petition for certiorari was filed April 16, 1943, and granted May 24, 1943 (R. 196). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended.

QUESTIONS PRESENTED

In its order granting certiorari this Court requested the parties to discuss the following questions applicable to this case:

(1) What bearing, if any, the Norris-LaGuardia Act has on the propriety of granting the relief sought.

(2) Whether the district court had jurisdiction to review the certification of the Board.

The question presented on the merits is—

(3) Whether under the Railway Labor Act all of the employees of a carrier engaged in the same occupation must be treated as members of a single craft or class for purposes of collective bargaining.

STATUTE INVOLVED

The statute involved is the Railway Labor Act, as amended, in 1934 (48 Stat. 1185, 45 U. S. C. Sec. 151, *et seq.*). The pertinent provisions of the Act are set forth in the Appendix, *infra*, pp. 55–58.

STATEMENT

On July 2, 1940, the Brotherhood of Railroad Trainmen (hereinafter referred to as B. R. T.) invoked the services of the National Mediation Board to investigate a representation dispute among the yardmen of the New York Central Railroad Company (R. 27–28, 76). With its application, B. R. T. presented to the Board signed authorizations from 4,749 out of approximately 6,087 yardmen then employed by the Company (R. 35–36, 79–80, 137–138). At that time the Switchmen's Union represented yardmen in all yards on the Michigan Central branch of the New York Central west of the Detroit River,[1] and in all but nine yards of the New York Central Lines—West (R. 78–79, 96). The B. R. T. represented the yardmen on the remainder of the lines operated by the New York Central Railroad Company (*ibid.*).[2]

[1] The portion of the Michigan Central lines east of the Detroit River is in Canada.

[2] The number of authorizations presented from the yardmen on the New York Central Lines—West and the Michigan Central Lines was 774 and 479, respectively. The total number of yardmen on these lines was 1,362 and 1,072, respectively (R. 35–36, 79–80, 136–137). Petitioners state (Br. p. 24) that "There is no conclusive evidence in the record which discloses that any of the yardmen covered by the contracts of the Switchmen's Union questioned or disputed the right of such union to represent them." But most of the yards on Lines—West and all of the Michigan Central

The Brotherhood claimed that all the yardmen on the New York Central constituted a single craft or class within the meaning of the Act, and that since a majority of this craft or class desired to be represented by it, it should be certified as the representative (R. 28–29, 79–80). The Switchmen's Union, on the other hand, insisted that it was the representative of the yardmen on the Michigan Central and portions of Lines—West, that these properties constituted separate carriers, and that these groups constituted separate crafts or classes not part of a larger craft covering the entire railroad (R. 29–31, 79–80).

The Board investigated, and after finding that the parties were unable to agree, concluded that a dispute existed and set the matter for hearing in order to determine the basis upon which to conduct an election among the employees involved (R. 28–29, 76, 83). The evidence at the hearing may be summarized as follows:

The New York Central Railroad Company was created through a consolidation in 1914 of the New York Central and Hudson River Railroad and the Lake Shore and Michigan Southern Railway, operating lines from New York City to Chicago. The portion east of Buffalo has since

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Lines in the United States were under Switchmen's Union contracts (R. 35). It has never been suggested heretofore that all, or indeed any, of the authorizations for the latter line came from the employees operating under B. R. T. contracts, who were in Canada and thus not subject to the Board's jurisdiction.

been known as New York Central Lines—East, and the portion west of Buffalo as New York Central Lines—West. The New York Central Railroad Company also has leased lines previously operated by other railroad companies (most of which are its subsidiaries), and operates them. (R. 76–77.) The railroad companies whose lines are thus operated are the Boston and Albany, the Big Four, the Michigan Central, and the Toledo & Ohio Central.[3] The New York Central owns no stock of the Boston and Albany, but has controlling stock ownership in the other lines (R. 77). It owns 99.44 per cent of the capital stock of the Michigan Central, which is maintained in existence as a corporation solely to preserve the minority rights of a few stockholders who have refused to sell their stock (R. 91). The leases between the New York Central (lessee) and the various subsidiaries are for 99 years renewable in perpetuity, except for the lease on the Toledo & Ohio Central, which is to continue for the corporate existence of the lessor.[4] The leases pro-

[3] Other railroad companies, the stock of which is owned by the New York Central, are operated as independent railroads under their own management (R. 91–92). Such roads (*e. g.*, the Pittsburgh and Lake Erie), although part of the New York Central System, are not operated by the New York Central Railroad Company and are not involved in this case.

[4] Each of these lessor companies has long-term leases on a number of smaller railroads which are now operated under the lease between the intermediate lessor company and the New York Central Company (R. 33–34).

vide for payment by the lessee of annual rents, interests on outstanding obligations, taxes, and organization expenses and also provide that all rentals and charges for which the lessor railroad may become liable during the term of the lease shal be paid by the lessee. (R. 88–92.)

In the operation of the railroad company, common executives serve both the New York Central and the leased lines and coordinate activities where the use of more than one part or line of the company is involved. The Executive Vice President coordinates the activities of the mechanical and maintenance-of-way departments, and train service coordination is secured through managers of passenger and freight transportation who plan and supervise the through passenger and freight service affecting all the lines. Corresponding officers on the separate divisions of the railroad look after the detailed operations on the properties. (R. 36–38, 77–78, 146–147.)

Management of the carrier's affairs follows neither the corporate nor geographical lines of the subsidiaries. The superintendent at Toledo has jurisdiction over the entire Toledo terminal, in which is included portions of the Michigan Central, Lines—West, and the Toledo and Ohio Central. (R. 116.) The Superintendent of the Western Division has jurisdiction over the Illinois Division of the New York Central Lines—West, the Western Division of Michigan Central, the Michigan Central yards in Chicago, and the Big

Four yards at Danville, Illinois (R. 117). The timekeeping department located at Detroit handles pay rolls for Lines—West, the Michigan Central, the Big Four, and the Toledo and Ohio Central; the pay rolls for the Lines—East and the Boston and Albany are prepared in Utica (R. 37–38, 78, 115–117). The jurisdiction of the Medical Director of the New York Central Railroad includes all the leased lines with the possible exception of the Boston and Albany (R. 118). The New York Office of the New York Central Railroad has to approve expenditures for equipment on the subsidiary lines (R. 133–135). The New York Central Railroad Company has considered that all leased lines are an integral part of the Railroad, and that together with the New York Central they constitute one railroad (R. 99–100).

Negotiations between management and representatives of employees are subject to the general supervision of the Vice-President-Personnel of the New York Central. While the Vice-President-Personnel's principal function is to serve in an advisory capacity to the responsible officials of the different properties, on occasion he has participated in actual negotiations for changes in rules or working conditions applicable only to certain subsidiaries. (R. 38, 78, 125–127, 148.)

With respect to employee grievances, bureaus have been established at various points not necessarily corresponding to the separate lines. In some cases the handling of grievances has been

concluded with the bureau or Vice President located at the particular point. In other cases, the grievances have been carried to and handled by Vice-President-Personnel before submitting them to the National Railroad Adjustment Board. (R. 38, 78, 118–120.)

Existing agreements between the management and representatives of other crafts or classes of employees vary in their territorial scope, but in most instances these agreements cover the employees of the given craft or class on each leased line and on the New York Central—Lines East and Lines West separately (R. 35–38, 78, 148–150). Many of these agreements had been made before the operations of the leased lines had been taken over by the New York Central (R. 78). There has not yet been a general movement on either the part of the management or the employees to adopt agreements covering the entire railroad (R. 78, 94–95, 113–115). There have been several instances of merging of seniority rosters of yardmen in the service of the subsidiary lines (R. 38, 78–79, 125–126).

Since 1935, engine numbers on the Big Four locomotives have been changed to correspond with the New York Central locomotive numbers, and in similar fashion, numbers on boxcars and other equipment, even when they do not leave the lines of the Big Four, have been conformed. No per diem charge is exacted on locomotives and

cars exchanged between the New York Central and the Big Four (R. 38–39, 79, 134–136).

The New York Central files with the Interstate Commerce Commission annual operating reports for all of its operations, which cover its leased lines and which are not broken down to show the operations of such lines separately. The New York Central likewise files 13 different monthly and quarterly reports which include the results of operations over all of its leased lines, except that certain of these reports are filed separately for the Boston and Albany.[5] The leased lines retain their corporate identity and file annual *financial* reports with the Interstate Commerce Commission. Also, separate monthly accident reports are filed for them, all of which are signed by the General Claims Attorney of the New York Central Railroad Company; the New York Central Railroad Company similarly segregates the monthly accident reports of its Lines East and West. (R. 8, 73–79.)[6]

On the basis of this evidence the Mediation Board found that the Michigan Central and

[5] Separate reports are filed for the Boston and Albany at the specific request of the Commission, which desires the break-down of this information because of the relative statistical importance of the Boston and Albany in the New England region (R. 73–75, 84–87).

[6] These accident reports are filed on an individual, rather than a consolidated, basis in order to provide accident data for use, among other things, in connection with the promotion of safety (R. 75).

Lines—West were not separate carriers, but were part of the properties operated by the New York Central Company as a single carrier. The Board concluded as a matter of law that it was required to hold that all the yardmen of a carrier constituted a craft or class within the meaning of the Act. (R. 27–47.) Accordingly, the Board ordered an election to be held among all the yardmen employed by the New York Central Railroad Company (R. 46–47).

The election was held after the Switchmen's Union had brought this suit and sought a temporary injunction in an unsuccessful attempt to restrain the Board from proceeding (R. 2A).[7] Of 7,187 employees eligible to vote, 4,112 voted for the B. R. T. and 941 for the Switchmen's Union (R. 48–49). The Board thereupon, on April 24, 1942, certified the B. R. T. as the representative of the craft or class of yardmen employed by the New York Central Railroad Company (R. 47–49).

The Switchmen's Union and some of its members, petitioners herein, are suing to have the Board's certification set aside and to enjoin the

[7] This suit was brought originally to restrain the Board from holding the election. After a temporary injunction was denied by the district court (R. 2A), the election was held and the Board's certification issued. The complaint was thereupon amended so as to pray that the certification be set aside. The case is now before this Court on the pleadings as amended after the issuance of the Board's certification, and as subsequently amended after pretrial conference so as to consolidate the original and amended pleadings.

Board from combining the yardmen employed on New York Central Lines—West and the Michigan Central with other yardmen employed by the New York Central Railroad as a single craft or class. The B. R. T., the New York Central Railroad Company, and the Michigan Central Railroad Company were also made party defendants (R. 4–5), and the complaint prays that they be enjoined from negotiating or making agreements governing the yardmen on the Michigan Central and Lines—West (R. 26).

The district court heard the case upon the pleadings (R. 3–73), the record before the Board (R. 82–159, 27–39), and a stipulation of the parties (R. 73–75). It entered findings of fact and conclusions of law to substantially the same effect as the findings of the Board (R. 76–81). It held that the Board's finding that all the lines operated by the New York Central Railroad Company constituted a single carrier for purposes of the Railway Labor Act was supported both by substantial evidence and by the weight of the evidence, and was not arbitrary, capricious, or unreasonable (R. 80–81). The court also held that the Board's conclusion that all the employees in a particular craft or class in the service of a single carrier were to be taken together as the proper basis for selecting a representative was proper and not to be set aside. Accordingly, the court entered judgment dismissing the complaint. (R. 80–81.)

This judgment was affirmed by the United States Court of Appeals for the District of Columbia (R. 160–181), with Mr. Justice Rutledge dissenting (R. 181–193). Although the dissenting opinion rejected petitioners' contentions, it concluded that the Board had discretion to determine whether the craft or class bargaining unit should be carrier-wide in the particular case, and that there was no rule of law justifying the Board's refusal to exercise its discretion here.

SUMMARY OF ARGUMENT

I

Although the prayers for injunctive relief fall within the terms of the Norris-LaGuardia Act, that Act was not designed to reach suits to review the orders of governmental agencies; the evils at which the Act was directed were of an entirely different character. Accordingly, we have grave doubts as to whether the Act should be construed so as to apply to this type of case. In any event, insofar as the presently pertinent prayers for relief against the Board and its members are concerned, the complaint does not seek an injunction, but to have the Board's certification set aside.

II

The Railway Labor Act contains no provision authorizing suits to set aside certifications of the National Mediation Board. In the absence of leg-

islative consent to such a suit, the district courts have no jurisdiction over the Board itself, or to set aside the Board's certification, inasmuch as that is the final act of the Board as Board and not of its members as individuals. Moreover, there is no basis for equitable relief against the members of the Board, inasmuch as there is nothing they can do which can injure petitioners once the certification has been issued. Apart from the Norris-LaGuardia Act, the district court would, however, appear to have jurisdiction over the case insofar as the carrier and the opposing labor organization are concerned, inasmuch as equity may protect an organization claiming to have the lawful right exclusively to represent a craft of employees so as to prevent a carrier from bargaining with a competing union. *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515.

III

A. The Board's decision that as a matter of law the "craft or class" referred to in the Act was a carrier-wide bargaining unit is supported by the interpretation of Commissioner Eastman, who explained, as well as of those who opposed, the provision before the congressional committees. An amendment suggested by the carriers in order to avoid the very situation presented here was not adopted. Whether the requirement of a carrier-wide bargaining unit is wise as a matter of policy

is a difficult question to answer. We believe the Board's decision accords with the only available manifestations of legislative intention, but have no other reason to oppose a construction of the Act which would allow the Board to exercise greater discretion.

B. Petitioner's arguments that the Board was required as a matter of law to hold that the yardmen on the Michigan Central and Lines—West constitute separate bargaining units is without merit. The contention that only the yardmen on those portions of the New York Central are "involved in the dispute" begs the question; the yardmen on the rest of the railroad are involved if all New York Central yardmen form a single craft or class. The provisions of the Act protecting the employees' freedom of association and right to select representatives of their own choosing are directed at interference by the employer and have nothing to do with the scope of the bargaining unit. Section 1, Fifth, of the Act was never intended to preclude determination by the Board of the proper limits of a craft or class in resolving a representation dispute; if that paragraph were construed as petitioners suggest, it would conflict with the more specific and subsequently enacted provisions of Section 2, Ninth, authorizing the Board to decide such questions. Although preexisting contracts are among the factors to be considered by the Board in deter-

mining the limits of a craft or class, they are plainly not made conclusive by the Act.

ARGUMENT

I

THE APPLICATION OF THE NORRIS-LA GUARDIA ACT TO THIS CASE

The Court has asked the parties to discuss "what bearing, if any, the Norris-LaGuardia Act has on the propriety of granting the relief sought."

The petitioners' complaint prays the court (1) to enjoin the Mediation Board from issuing a certification that the B. R. T. represents yardmen on the Michigan Central and New York Central Lines—West,[8] (2) to enjoin the Board from entering an order combining the yardmen on the entire New York Central into a single craft or class for collective bargaining purposes,[9] (3) to vacate, set aside, and annul the Board's finding that the yardmen on the New York Central constitute a single craft and its order that an election be conducted on that basis,[10] (4) to annul, vacate, and set aside the Board's certification that the B. R. T. has been duly designated to represent the yardmen employed by the New York Central Railroad,[11] and (5) to enjoin the defendants B. R. T.

[8] See Paragraph 2 of the prayer for relief (R. 24–25).
[9] See Paragraphs 3 and 4 of the prayer (R. 25).
[10] See Paragraphs 5 and 6 of the prayer (R. 25–26).
[11] See Paragraph 7 of the prayer (R. 26).

and the New York Central Railroad Company from negotiating, entering into or maintaining an agreement covering yardmen employed on the Michigan Central and Lines—West.[12] Inasmuch as the Board has already held the election and issued its certification combining the yardmen on the New York Central into a single craft (R. 47–49), the attempt to enjoin it from doing so can no longer be successful,[13] and the controversy with respect to those parts of the prayer is now moot.

The Norris-LaGuardia Act provides that "no court of the United States * * * shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act" (Section 1, 47 Stat. 70, 29 U. S. C. § 101). "Labor dispute" is defined as including "any controversy concerning * * * representation" (Section 13 (c), 29 U. S. C., § 113 (c)), and the Act provides that "a case shall be held to involve or grow out of a labor dispute when the case involves persons who are engaged in the same industry * * * whether such dispute is * * * (3) between one or more employees or associations of employees and one or more employees or associations of employees" (Section 13 (a), 29 U. S. C., § 113 (a)). Since the instant case arose out of a dispute as to representation between two as-

[12] See Paragraph 8 of the prayer (R. 26).

[13] See note 7, *supra*, p. 10.

sociations of employes, it would seem to fall within the literal coverage of the Act. It has been held in a number of cases that the Act is applicable to jurisdictional disputes between labor organizations. (*Fur Workers' Union* v. *Fur Workers' Union*, 105 F. (2d) 1 (App. D. C.), affirmed, 308 U. S. 522; *International Brotherhood of Teamsters* v. *International Union of United Brewery Workers*, 106 F. (2d) 871 (C. C. A. 9); *Green* v. *Obergfell*, 121 F. (2d) 46 (App. D. C.); cf: *United States* v. *Hutcheson*, 312 U. S. 219.

Nevertheless, we do not believe that the Norris-LaGuardia Act was designed or intended to reach cases such as this.[14] The Senate committee report (No. 163, 72d Cong., 1st Sess., p. 25) stated that "the main purpose" of the definitions in Section 13—

> is to provide for limiting the injunctive powers of the Federal courts only in the special type of cases, commonly called labor disputes, in which these powers have been notoriously extended beyond the mere exercise of civil authority and wherein the courts have been converted into policing

[14] Inasmuch as an action to set aside a Mediation Board certification is not authorized by the Railway Labor Act, the suit against the Board and its members would not appear to fall in the same class as a suit to enforce the statutory mandate that a carrier treat with the certified representative. The latter type of action was held in *Virginian Ry. Co.* v. *System Federation No. 40*, (300 U. S. 515, at 563), not to be subject to the Norris-LaGuardia Act.

> agencies devoted in the guise of preserving peace, to the purpose of aiding employers to coerce employees into accepting terms and conditions of employment desired by employers.
>
> The proposed bill is designed primarily as a practical means of remedying existing evils, and limitations are imposed upon the courts in that class of cases wherein these evils have grown up and become intolerable. * * *

The declaration of public policy in Section 2 of the Act demonstrates that its object was to assure employees the right to self-organization without interference by the employer, and the terms of the Act show that it was intended to protect the rights of labor to engage in types of conduct which the courts had previously enjoined. The legislative history of the Act and the decisions of this Court under it uniformly recognize that "the purpose of the bill is to protect the rights of labor in the same manner the Congress intended when it enacted the Clayton Act * * *." H. Rep. No. 669, 72d Cong., 1st Sess., p. 3; *United States* v. *Hutcheson*, 312 U. S., at 236; *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91.

It appears that the framers of the Act did not contemplate its application to suits by employees.[15] In any event it seems obvious that they

[15] In the Senate debate Senator Steiwer criticized the bill as too broad in that it would even prevent employees from

did not have in mind suits to review the orders of governmental bodies, inasmuch as the administrative agencies which now operate in the field of labor relations did not then exist. We have grave doubts as to whether the Act should be construed broadly enough to apply to such situations, despite its language.[16] If the Act had

obtaining such injunctive relief against employers as was secured in *Texas & New Orleans R. Co.* v. *Brotherhood of Ry. Clerks*, 281 U. S. 548. Senators Norris and Blaine, supporting the bill, denied that it would reach proceedings brought by employees to enforce their rights under the Railway Labor Act (75 Cong. Rec. 4936–4937). During this discussion the following colloquy occurred:

"Mr. STEIWER. Does the Senator contend that the phrase 'association or organization' is applicable only to an employees' association or an employees' organization and is not applicable to an employers' association or an employers' organization? In other words, is this bill to be construed as working one way only or does it work as to both employer and employee without discrimination?

"Mr. BLAINE. I can conceive of no case where an employee would bring an action under this act along the line the Senator has suggested. The action would be brought against the employees or their association or their organization. There are no employees going to bring any action under this act against the employer in any labor dispute as defined in this act."

[16] That the Act has not generally been regarded as applicable to injunction suits involving the validity of Board action under the Railway Labor Act is indicated by the many cases in which the courts have entertained such suits without the point being raised or considered. *Association of Clerical Employees* v. *Brotherhood of Railway Clerks*, 85 F. (2d) 152 (C. C. A. 7); *Brotherhood of Locomotive Firemen and Enginemen* v. *Kenan*, 87 F. (2d) 651 (C. C. A. 5), certiorari denied *sub nom. Grand International Brotherhood* v. *Kenan*, 301 U. S. 687; *Brotherhood of Railroad Trainmen* v. *National*

been literally applied to actions against Government officials, it would have reached the many suits brought to enjoin proceedings of the National Labor Relations Board, and yet it was never suggested in *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, and similar cases, that the Norris-LaGuardia Act deprived the courts of jurisdiction. It is elementary that statutes are to be interpreted so as to "carry into effect the true intent and object of the legislature," and when the words of an act lead to a result plainly not contemplated or desired, the court may give effect to the purpose rather than follow the literal language into an area beyond the actual content of the legislation. *United States* v. *American Trucking Assns.*, 310 U. S. 534, 542–543, and cases cited.

In the instant case it seems unnecessary to decide this question insofar as the Board and its members are concerned, inasmuch as the portions of the complaint which have not been rendered

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Mediation Board, 88 F. (2d) 757 (App. D. C.); *National Federation of Railway Workers* v. *National Mediation Board*, 110 F. (2d) 529 (App. D. C.), certiorari denied, 310 U. S. 628; *Order of Railway Conductors* v. *National Mediation Board*, 113 F. (2d) 531 (App. D. C.); *Brotherhood of Railroad Trainmen* v. *National Mediation Board*, 135 F. (2d) 780 (App. D. C.); cf. *Brotherhood of Railroad Shopcrafts* v. *Lowden*, 86 F. (2d) 458 (C. C. A. 10), certiorari denied, 300 U. S. 659; *Nord* v. *Griffin*, 86 F. (2d) 481 (C. C. A. 7), certiorari denied, 300 U. S. 673; *Railroad Yardmasters* v. *Pittsburgh & L. E. R. Co.*, 39 F. Supp. 875 (N. D. Ohio). *Contra: Cole* v. *Atlanta Terminal Company*, 15 F. Supp. 131 (N. D. Ga.).

moot do not in terms seek to enjoin or restrain their conduct but to have the Court annul, vacate or set aside the Board's finding and order. Although the prohibitions of the Norris-LaGuardia Act should not be subject to evasion by incorporating in decrees other verbs having the same effect as "enjoin" or "restrain," the present situation is not one in which the petitioners are seeking to circumvent the objects of the statute. Since no injunction against the Board is asked, we see no reason why the Act should be broadly interpreted here to reach a result not within its objectives.

Petitioners' prayer for injunctive relief against the B. R. T. and the Railroad Company does, of course, come within the prohibition against injunctions and restraining orders, so that the above observations are not applicable to Paragraph 8 of the prayer. The Norris-LaGuardia Act would bar the granting of the injunction sought in that paragraph,[17] unless the Court is of the view that the Act was never intended to be, and therefore is not, applicable to this type of proceeding. Since the relief sought against the carrier and the B. R. T. seems to be ancillary to the cause of action stated against the Board and its

[17] See *Cole* v. *Atlanta Terminal Co.*, 15 F. Supp. 131 (N. D. Ga.). To the extent that the Act is applicable, it prevents the issuance of an injunction, inasmuch as no attempt was made to comply with the requirements of Section 7 (29 U. S. C., Sec. 107). Whether or not those requisites could be met in this type of case need not be determined here.

members, it is possible to treat the entire proceeding as one not coming within the purview of the Act.[18]

II

THE JURISDICTION OF THE DISTRICT COURT

The Court has requested the parties to discuss whether the district court had jurisdiction to review the certification of the National Mediation Board.

The complaint (R. 5) states that the suit is brought under the Railway Labor Act and also under the general equity jurisdiction of the district court. The Railway Labor Act contains no provision authorizing the institution of a proceeding to set aside an order of the Mediation Board. The question, therefore, is whether the case falls within the general equity jurisdiction of the District Court for the District of Columbia.

a. The immunity of the United States from

[18] If the Switchmen's Union had sued as the representative of a craft to enforce its statutory rights by enjoining the carrier from treating with anyone else as the representative of that craft, the case might be regarded as falling within the exception to the Norris-LaGuardia Act recognized in the *Virginian Railway* case (300 U. S., at 563). Although Paragraph 8 of the petitioners' prayer for relief is consistent with this theory, we find it difficult to read the complaint as a whole as making any such claim; the complaint is concerned with the wrongful action of the Board, and not of the carrier. Furthermore no evidence was introduced as to what the carrier had done or would do. The carrier's answer indicated only that it would abide the decision of the Court (R. 73).

suit, in the absence of legislative consent, undoubtedly extends to the Board. Congress has nowhere consented to the Board's being sued. Accordingly, the district court has no jurisdiction over the Board itself.

b. Even though a government agency is not subject to suit, an action will lie against its members individually where they are acting or threatening to act beyond their authority. *Yearsley* v. *Ross Construction Co.*, 309 U. S. 18, 21; *Philadelphia Company* v. *Stimson*, 223 U. S. 605, 619–620; *Hopkins* v. *Clemson College*, 221 U. S. 636, 642, *et seq.* In such cases the officers do not share the immunity of the United States. But since they are sued as individuals, relief cannot be obtained against them unless their personal conduct is such as to satisfy the ordinary requisites of equity jurisdiction. Cf. *Ex Parte La Prade*, 289 U. S. 444; *Beal* v. *Mo. Pac. R. Corp.*, 312 U. S. 45; *Watson* v. *Buck*, 313 U. S. 387, 400.

Under the Railway Labor Act, the certification of the Board is a mere finding of fact which may serve as the basis for an enforcement action brought by the successful labor organization if the carrier refuses to bargain with it. *Virginia Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515, 562. Although to that extent the award determines legal rights, no penalties are imposed for failure to bargain with a certified representative. Upon the issuance of a certification, the function

of the Mediation Board in the representation proceedings is completed. Thereafter, there is nothing the members of the Board can do to enforce the certification. Since the members of the Board do not enforce the certification or take any other action after its issuance, there would appear to be no conduct on their part susceptible of being enjoined which could cause petitioners irreparable injury.[19] An injunction against the Board members accordingly would avail petitioners nothing, since it would have nothing upon which to operate. Indeed, in view of the inability of the Board members to take further action affecting petitioners, there may not even be a controversy with them in the constitutional sense.

The complaint does not in terms seek an injunction against the members of the Board but a court order setting aside the certification. The certification is the official act of the Board *qua* Board, not of its members as individuals, and a court order acting directly upon the certification rather than upon the Board members would seem to be banned by the prohibition against suits against the United States and the lack of express statu-

[19] By this we do not mean to imply that a certification may not have the effect of injuring the unsuccessful organization. But such injury flows from compliance with the certification by the carrier, against which an enforcement proceeding may be brought by the certified organization, not from the possibility of future action on the part of the members of the Board.

tory authority for such a proceeding.[20] We do not think that the result would differ if the suit were regarded as one to compel the Board members to set aside the certification. To be effective such action would have to be done in their official capacities, for they could not as individuals cancel the certification. Cf. *Wells* v. *Roper*, 246 U. S. 335; *Belknap* v. *Schild*, 161 U. S. 10; *Cunningham* v. *Macon & Brunswick R. R.*, 109 U. S. 446, 454–457; *Louisiana* v. *McAdoo*, 234 U. S. 627; *Transcontinental & Western Air, Inc.* v. *Farley*, 71 F. (2d) 288 (C. C. A. 2), certiorari denied, 293 U. S. 603.[21]

c. These obstacles to jurisdiction over the Board and its members do not apply to the other

[20] The issuance of a certification is not a ministerial act, but one requiring the exercise of administrative discretion, and the Board undoubtedly had jurisdiction to issue the certification whether or not its decision was correct. Its failures to reach a correct judgment does not constitute its members wrongdoers or violate any statutory duty owing to petitioners such as would furnish the basis for a suit against a private individual or for an action of mandamus.

[21] It does not follow from the fact that an injunction will not lie against the Board members after a certification has been issued that an injunction will lie against the issuance of the certification. *Heller Bros. Co.* v. *Lind*, 86 F. (2d) 862 (App. D. C.), certiorari denied, 300 U. S. 672. Courts will not interfere prematurely with the completion of the administrative process. *Rochester Telephone Corporation* v. *United States*, 307 U. S. 125, 129–130. Inability to attack the certification directly would not result in its being immune from judicial review. Cf. *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515; *Brotherhood of Railway Clerks* v. *Nashville, C. & St. L. Ry.*, 94 F. (2d) 97 (C. C. A. 6).

defendants. Apart from the Norris-LaGuardia Act (as to which see Point I, *supra*, pp. 15–22), a court of equity may well have jurisdiction over an action brought by a labor organization claiming to have the lawful right exclusively to represent a craft of employees to restrain an employer and another organization from bargaining with respect to that craft. The *Texas & New Orleans* and *Virginian Railway* cases establish that deprivation of the right to bargain as exclusive craft representatives causes irreparable injury and warrants equitable relief. The district court would thus seem to have had jurisdiction of the case in so far as the other defendants are concerned.

The absence from the Railway Labor Act of any provision for judicial review of Board certifications does not, in our opinion, manifest a legislative intention that such certifications were to be conclusive upon the courts.[22] The legislative history of the Act is silent upon this point. But in the *Virginian Railway* case, this Court permitted the validity of the certification to be challenged in a suit against the carrier (300 U. S., at 559–560), and since that time the courts have uni-

[22] Cf. *Shields* v. *Utah-Idaho Central R. Co.*, 305 U. S. 177, in which a determination of the Interstate Commerce Commission pursuant to Section 1, First of the Railway Labor Act, when collaterally attacked, was treated as any other order of the Commission in so far as the scope of judicial review was concerned, despite the absence of any provision in the Act for such review.

formly held that the Board's certifications were entitled to the same respect as determinations of other administrative bodies.[23]

The Board's decisions may thus be judicially reviewed in an appropriate case to which the competing labor organizations and the carrier are parties. In such a case between the interested parties, particularly when an important question

[23] The courts have agreed that a certification is not to be set aside unless arbitrary, capricious, or otherwise unlawful. *Brotherhood of Railroad Trainmen* v. *National Mediation Board*, 88 F. (2d) 757 (App. D. C.); *National Federation of Railway Workers* v. *National Mediation Board*, 110 F. (2d) 529 (App. D. C.), certiorari denied, 310 U. S. 628; *Order of Railway Conductors* v. *National Mediation Board*, 113 F. (2d) 531 (App. D. C.); *Brotherhood of Locomotive Firemen and Enginemen* v. *Kenan*, 87 F. (2d) 651 (C. C. A. 5), certiorari denied *sub nom. Grand International Brotherhood* v. *Kenan*, 301 U. S. 687; *Nashville, C. & St. L. Ry.* v. *Railway Employees' Dept.*, 93 F. (2d) 340 (C. C. A. 6), certiorari denied, 303 U. S. 649; *Brotherhood of Railway Clerks* v. *Nashville, C. & St. L. Ry. Co.*, 94 F. (2d) 97 (C. C. A. 6); *Brotherhood of Railway Clerks* v. *Virginian Ry. Co.*, 125 F. (2d) 853 (C. C. A. 4). When the Board holds hearings, this is determined on the basis of the record before the Board, and the substantial evidence rule is applicable. E. g., *Order of Railway Conductors* v. *National Mediation Board*, *supra*. When the Board does not hold hearings, the determination is based upon the evidence taken in court. *National Federation of Railway Workers* v. *National Mediation Board*, *supra*; cf. *Virginian Ry Co.* v. *System Federation No. 40*, 300 U. S., at 562. The statute does not require the Board to hold hearings, and has given the Board no subpoena powers. Nevertheless, the Board does hold hearings when there is a controversy as to the extent of a voting unit in a representation dispute, inasmuch as in such cases the parties generally see that all essential evidence is presented to it.

as to the meaning of the Act is involved, the Board would be inclined to intervene or to appear as *amicus curiae* in defense of its decision. Where the Board and its members are made defendants, as here, it seemed futile to move for a dismissal of the complaint as to them, if the granting of such a motion would be followed immediately by an application on the Board's behalf for leave to participate in the case. In view of these considerations, the Board has deliberately refrained from attacking the court's jurisdiction over it in a number of cases brought against it in the District of Columbia,[24] which is, of course, the only district in which its members can be personally served. It failed to raise the jurisdictional questions in the lower courts in this case, and we have briefed them here because the Court has so requested.

III

THE VALIDITY OF THE BOARD'S CERTIFICATION—WHETHER THE RAILWAY LABOR ACT REQUIRES A BARGAINING UNIT TO BE CARRIER-WIDE

In this case the Board found on the facts that the entire New York Central, including the Michigan Central and Lines West, was operated as and was a single carrier within the meaning of the Railway Labor Act. This being so, the Board

[24] See the first three cases cited in note 23, *supra*.

concluded as a matter of law that all the yardmen on the New York Central formed a single craft for purposes of collective bargaining.

In the courts below, petitioners attacked as unsupported by substantial evidence the Board's finding of fact that the entire New York Central was operated as a single carrier. The district court held this finding to be "supported both by substantial evidence and the weight of the evidence" (R. 80). The Court of Appeals held it to be "a very reasonable conclusion" (R. 170).[25] Presumably in view of the concurrent findings of the Board and the two lower courts, petitioners have now abandoned their contention as to the failure of the evidence to support the Board's findings in this respect.

This leaves for determination only the question of law whether the Board was required by the Act to hold, as it did, that the bargaining units into which railroad employees are to be divided must invariably be carrier-wide. The Board admitted that arguments could be made on either side of this question, but found that Congress had given it no authority to consider the advantages or disadvantages of the carrier-wide unit from the standpoint of policy (R. 46). Its decision was squarely predicated on its conclusion that the statute should be construed as depriving it of

[25] Mr. Justice Rutledge concurred on this point (R. 181).

power to recognize a bargaining unit less than carrier-wide.

On the legal question thus presented, three positions have been taken:

(1) The Board and the majority of the Court below have construed the Act as requiring the bargaining unit to be carrier-wide. If this view be adopted the decision below should be affirmed.

(2) Mr. Justice Rutledge was of the opinion that the Act imposed no inflexible rule in this respect but gave the Board discretion to take all factors into consideration in determining the geographical limits of the bargaining unit. If this view prevails, the case should be remanded to the Board for the exercise of its discretion.

(3) Petitioners, while agreeing with Mr. Justice Rutledge that a carrier-wide unit is not mandatory, go further and contend that the Board was required as a matter of law not to combine the Michigan Central and the portions of Lines West on which the Switchmen's Union represented the yardmen with the other divisions of the New York Central. If this view be accepted, the judgment below should be reversed without remanding the cause for the exercise of the Board's discretion.

We shall first take up the basic question as to whether the Act establishes an inflexible test, and then discuss petitioners' contentions.

A. *The meaning of "craft or class," as indicated by the legislative history of the Act*

The Board's ruling that the bargaining unit was required to include all employees of a carrier performing similar work was predicated on the language of the Act and on its own prior decisions and rulings.[26] The Board's opinion (R. 46) refers in particular to the statement in Section 2, Fourth, that—

> The majority of any craft or class of employees shall have the right to determine who shall be the *representative* of the craft or class for the purposes of the Act. [Italics supplied.]

The use of the singular "representative" was thought to show that there could be only one representative for each craft or class on a carrier. We agree with Mr. Justice Rutledge (R. 183)

[26] The Board's opinion reviews its decisions supporting the interpretation of the Act here adopted (R. 40–45), and also quotes from a letter written to the New York Central Railroad in 1937 in which it stated its position to be "that where a dispute exists within a class or craft, the law gives us no discretion, but to make a determination of choice of representative for the entire class or craft for the entire railroad involved regardless of presently existing agreements, unless all parties to the present dispute agreed otherwise" (R. 45).

This administrative interpretation would ordinarily be entitled to weight. The opinion of Mr. Justice Rutledge has, however, advanced arguments not previously considered by the Board, and the Board at the present time is taking no position as to how the statute should be construed pending the decision of this Court.

that the use of the singular proves only that a carrier was required to deal with one representative for each craft or class, and cannot be regarded as defining the craft to be represented. Accordingly, we do not believe that the statutory language relied upon solves the problem.[27]

Nevertheless, even though the bare language of the Act does not compel the result reached by the Board, its decision is supported by the legislative history of the statute. The Act, in paragraphs Fourth and Ninth of Section 2, defines the bargaining unit as the "craft or class," without further amplification.[28] Those words, of course,

[27] We shall show (*infra*, pp. 44–51) that other provisions of the Act upon which petitioners rely have no bearing upon this problem.

[28] These words do not define possibly conflicting units, as petitioners suggest (Br. 9, 37). The Board has differentiated between "craft" and "class" as follows: "Analyzing the phrase 'craft or class' (which the law fixes as the unit for collective bargaining), it is to be noted that there are two types of organization in the railroad industry, one being the craft as ordinarily known to trade unionism where definite provision is made in the rules and working agreements for the education and development of apprentices and helpers. This type is found more particularly in the shops engaged in maintenance of equipment. All other railroad labor has been in the past recognized and dealt with by management in reasonably well defined classes. For example: the organization of Maintenance of Way employees has been made and recognized for many years as consisting of section foremen, track laborers, bridge and building foremen, bridge and building mechanics and helpers." National Mediation Board, *In the Matter of Representation of Employees of the Delaware, Lackawanna & Western Railroad Company*, Cases M–199 and R–358, Aug. 13, 1937, p. 6.

carry a ~~practical~~ functional and occupational connotation, but in their ordinary meaning do not suggest geographical boundaries. The crucial question is whether, as used in this Act, the words were regarded as describing a carrier-wide bargaining unit.

This very point was raised at the hearing before the House committee. The 1934 amendments to the Railway Labor Act were originally prepared and explained to the congressional committees by Mr. Eastman, then Federal Coordinator of Transportation.[29] In answer to a question by a member of the Committee, he testified on this precise point as follows (House Hearing, p. 57):

> Mr. HUDDLESTON. There seems to be an ambiguity in the second sentence of this subsection fourth.
>
> "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this act."
>
> And, I am uncertain just what is meant by a majority. Does that mean a majority of all of the employees in the service of that particular employer?

[29] Hearings before House Committee on Interstate and Foreign Commerce on H. R. 7650, Railway Labor Act Amendments, 73d Cong., 2d Sess., pp. 15–65 (hereinafter referred to as "House Hearings"), and Hearings before the Senate Committee on Interstate Commerce on S. 3266, to amend the Railway Labor Act, 73d Cong., 2d Sess., pp. 9–26, 145–160 (hereinafter referred to as "Senate Hearings").

Commissioner EASTMAN. As it reads, I think it does, sir.

Mr. HUDDLESTON. For illustration, let us take the case, we will say, of the machinists at a given shop when there are other machinists employed at other shops. Would these machinists at that particular shop be able to get together under this sentence and bargain with their employer?

Commissioner EASTMAN. Well, my understanding of the way in which the words "craft" or "class" have been defined in the past, is that they would cover the entire service of any particular carrier. That is, it would not be a class of employees, to pick out those that did work in a particular shop, but it would be all of the employees of the carrier, no matter in what shop they were located, who did that particular kind of work.

Mr. HUDDLESTON. For that particular employer?

Commissioner EASTMAN. Yes, for that particular employer.

Mr. Eastman also stated (House Hearings, p. 44):

* * * When it comes to collective bargaining in the matter of wages and working conditions, it seems to me plain that a company ought not be compelled to deal with more than one organization. It ought not to have to make bargains with two or three different organizations. * * *

The proposed bill was construed in the same way by Mr. M. W. Clement, chairman of the committee of the railroads designated to deal with the proposed amendments to the Railway Labor Act. Indeed, because he thought that the craft or class unit was to be carrier-wide, Mr. Clement opposed the majority rule provisions as a whole, and also urged before the House Committee that a proviso be added which would have permitted the territorial lines drawn in existing agreements to be followed. Mr. Clement testified as follows (*id.*, at p. 126):

> It is possible on a large system for the employees of one portion of that system to belong to one organization, and employees on another part of the system to belong to another organization, both having majorities in their respective territories. Management contends that the employees in each of these territories should have a majority right of representation in their territories, yet under a strict interpretation of the bill as it stands, the organization in the territory of greater employee density could outvote the organization of a territory having lesser employee density, thereby depriving them of their real choice of representation.

He proposed an amendment to Section 2, Fourth, as follows (*id.*, at p. 128):

> Line 10, following the word "Act", insert "Provided, that only each class or craft embraced in any existing agreement shall

be the employees to be considered to determine the majority of such employees for the purposes of representation."

This protects the existing agreements and makes representation coextensive.

* * * * *

The proviso in line 10 makes workable the sentence to which it is attached, without in any way changing its purport. It still provides that the majority of a class or craft shall govern, but does not permit the employees in one division or territory, working under agreement with one organization, to upset the will of the majority in another division or section who are working under agreement with another organization.

Taken as a whole there was no such paragraph in the Railway Labor Act of 1926. It is our recommendation that it be excluded from the proposed revised act, as we believe it is a paragraph of ambiguity and will probably create discord.

Mr. Walber, Vice-President of the New York Central, also opposed the bill, using its effect upon the representation of yardmen on Lines West as an illustration of the way in which he thought it would operate. He said (*id.*, at p. 155):

A local situation on the New York Central will illustrate my point. On what was the Lake Shore & Michigan Southern there are agreements with the Switchmen's Union who represent the men in certain yards, and the Brotherhood of Railroad

> Trainmen who represent the yardmen in other yards. This condition has existed for 30 years or more. There are no complications. The yards are separate and distinct from each other, and the seniority of switchmen is confined to the particular yard. However, if the proposed amendments are adopted, the men would have a perfect right to reopen the question of representation, and the management would be faced with numerous questions under the law as possible interference with the jurisdiction claimed by the organizations. * * *

The situation which Mr. Clement and Mr. Walber feared and sought to prevent is precisely that involved in the case at bar. The proposed amendment was not adopted by the Committee in the bill as reported, nor contained in the bill as finally passed.

The bill was passed in the form approved by Mr. Eastman, without further comment on the point in the committee reports or in the debates on the floor of Congress. The interpretation given the bill before the committees, concurred in both by those favoring and those opposing it, would seem to be the best present indication as to what it was intended to mean.

Mr. Justice Rutledge, dissenting below, was of the view that the legislative history of the Act shows that Congress intended to authorize the Board to settle jurisdictional disputes and that

"there was no more reason for empowering the Board to determine a functional jurisdictional dispute than a geographical or regional one" (R. 189). He recognized that Commissioner Eastman differentiated between the two situations, but found that (R. 189) "the distinction, considered in the light of the statute's total omission of definitive terms, functional and geographic, and of the equality of application of the reasons, for making the omission, to both types of issue, is untenable, notwithstanding its distinguished sponsorship." We agree that, when a representation dispute exists, the Act generally leaves the matter of craft definition to the Board and that the phrase "craft or class" is sufficiently broad to allow the Board to exercise discretion in applying it in particular cases. There are, however, reasons supporting a single inflexible rule in fixing the geographical limits of the different crafts, which do not apply in determining their functional boundaries.

Whether certainty, where feasible, is more desirable than flexibility in this field, and whether a compulsory carrier-wide unit is preferable as a matter of policy are difficult questions to answer. The Board's opinion states "Doubtless serious arguments may be made both for and against each method" (R. 46). In theory, disputes are likely to be engendered if groups of employees of a single company performing the same type of work are divided into separate bargaining units with different representatives. Competition between

the representatives might interfere with harmonious labor relations, and there would be opportunity for the employer to play off one group against the others.[30] On the other hand, it can be said that where groups of employees on geographically separate portions of a railroad have over many years bargained without friction through different representatives, a requirement that the bargaining unit be carrier-wide will create disputes where there were none before, as it has here.[31] Such a rule might prevent the recognition of any organization representing workers

[30] In so far as the railroads are concerned, rates of pay and other conditions of employment are generally agreed upon in nation-wide bargaining conferences between carriers and the train service brotherhoods jointly, including the Switchmen's Union and the Brotherhood of Railroad Trainmen.

[31] This was Mr. Justice Rutledge's view; he stated (R. 182–183):

"* * * But I think Congress was as far from commanding that all less than carrier-wide units be ousted as it was from concreting all units in the contract mold of 1934.

"The view that ouster is required would go far to destroy, rather than to promote, the peace in labor relations and the uninterrupted service of the carriers which were the statute's declared and primary objects. Section 1a. It makes the Act an invitation and an instrument for creating labor strife, especially in stirring up jurisdictional disputes. It gives this weapon to, and throws the whole weight of the legislation in favor of, the big unions as against the smaller ones. All that is needed for ouster of the latter is to cause some employee to question or "dispute" their right to act as representative, which a large union can always do. From that point on the ouster is almost automatic. The result of the election is, in these circumstances, a foregone conclusion. The Board becomes merely an election judge, having in effect a ministerial and often only a perfunctory function. This is

on part of a carrier where a majority of the employees performing the same tasks in other regions were not organized, and would thus impede the process of collective bargaining.[32] Furthermore, since the peaceful settlement of controversies through collective bargaining is dependent upon representation of the workers in accordance with their wishes, it may be questioned whether the forcible incorporation of a reasonably large and separate unit already satisfactorily represented into a larger unit will lead to harmonious labor relations.[33] It was Mr. Justice Rutledge's view that these conflicting considerations might better be resolved by the Board in the light of the facts of each particular case, and not on the basis of an inflexible rule requiring a carrier-wide unit.[34]

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but a policy of compulsory liquidation of the smaller bargaining units. I do not believe Congress intended to adopt it. Nor do the terms of the statute comport with such an intention."

[32] On some railroads there are crafts and classes not yet covered by collective agreements. This situation is more likely to arise, however, on the air lines, where most of the employees are not covered by such agreements. National Mediation Board, *Eighth Annual Report*, Table 14 (opposite page 43). The provisions of the Act, including Section 2, are made applicable to carriers by air by Title II, 49 Stat. 1189, 45 U. S. C., Secs. 181–188.

[33] On this, see the comments of Mr. Justice Rutledge (R. 190–192).

[34] It was his opinion that the statute emphasized the right of self-organization, and that this permitted the employees to divide themselves into bargaining units as they saw fit, sub-

The Board declined to exercise its expert judgment as to which of the above considerations of policy it deemed the most persuasive (R. 46). We find it difficult to determine which of the various intangible factors is entitled to the most

ject to the qualification that if they could not agree on the unit, the Board must make the decision. His opinion states (R. 192):

"But when * * * the employees cannot agree, some power must provide the decision as to the appropriate unit, unless the Act is to break down and its purposes be defeated. Those consequences cannot be avoided by leaving things forever as they have been set by the arrangements, contractual or otherwise, made in and for another day long gone. There must be some room for change and adjustment, but it need not be, and the law does not require it to be, in all cases a total disruption of existing arrangements.

"Between these two extremes the statute has drawn a compromise and, in my opinion, the only workable one. This is, in effect, that the Board must decide, when a dispute concerning representation presents the issue, 'who may participate in the election,' that is, what is the appropriate or proper unit of which the sense is to be taken by the majority vote (or other means) the Act requires. That decision is not to be made arbitrarily, or uniformly in all cases without regard to the varying conditions presented. It is to be made in the light of various factors, as shown by the evidence presented to the Board, including the size of the carrier, the nature of the preexisting or prevailing arrangements, the disruption of harmonious relations with the employer which the proposed change, or the failure to make it, might bring. Approached in this manner, the Board's decision might be for a carrier-wide craft or class or for one less extensive, depending upon the case made. Conceivably in some cases decision either way might be sustained. But in all events it is one which should be made by the exercise of the Board's judgment, not as an automatic reflection of a statutory requirement of carrier-wide crafts."

weight.[35] We think it sufficient to point out that there is no basis for suggesting that Congress was deliberately differentiating as a matter of policy between the Board's power to determine geographical and functional craft boundaries. The legislative history suggests merely that the framers of the Act though that the expression "craft or class" had a definite meaning in the former situation but not in the latter.

To the extent that the discussion before the House Committee reflects the usage of persons versed in the industry, it would appear that "craft or class" in railroad labor parlance contemplated a carrier-wide application. Stated otherwise, all employees doing certain kinds of work were, as a unit, to deal with the carrier as a unit. Congress could well have used the phrase in this sense in the setting of this Act and thus have intended to give the Board discretionary power only to determine the functional boundaries of the approved employee unit. Whether the legislature may be said to have had such an intention depends upon whether the explanation made by Mr. Eastman to the committee, with the rejection of the amendment referred to above, can be re-

[35] It may be of significance in this respect that the agency determining representation disputes outside of the carrier field is required by Congress to decide on the facts of each case whether the appropriate unit for collective bargaining "shall be the employer unit, craft unit, plant unit, or subdivision thereof." National Labor Relations Act, Section 9 (b), 29 U. S. C., Sec. 159 (b).

garded as having been adopted by Congress when it passed the bill in the form submitted by him. The consequence of adopting the carrier-wide test may in particular cases be unfortunate, and as a matter of policy there is much to be said in favor of the position taken by Mr. Justice Rutledge. In the circumstances, however, our conclusion is that the Board's decision is correct since it accords with the only available manifestations of legislative intention. We have no other reason to oppose a construction of the Act which would allow the Board to exercise greater discretion if the Act may be construed to permit it to do so.

B. *There is no merit to petitioners' arguments that the Board was required as a matter of law to hold the yardmen on the Michigan Central and Lines—West to be separate crafts*

Petitioners contend that on the facts of this case the Board was required, presumably as a matter of law, to hold that the yardmen on the Michigan Central and Lines—West constituted separate bargaining units. The arguments advanced in support of this contention ignore the manifestations of legislative intention just considered and, as we shall show, are also otherwise without merit. Viewed broadly, their contentions seem to rest on the proposition that "the right of self-organization" allows groups of em-

ployees an unlimited right to establish by contract whatever bargaining units they please. Such a position cannot be reconciled with the doctrine of majority rule, and is also inconsistent with the provisions of the statute defining a bargaining unit as a "craft or class."

1. *The employees "involved in the dispute."*— Petitioners call attention (brief pp. 26–34) to the provision in Section 2, Ninth, that the Board shall certify individuals or organization "to represent the employees involved in the dispute," and claim that the yardmen on the entire New York Central were not involved in any dispute but that at most the dispute related to the men in the yards operating under contract with the Switchmen's Union. Petitioners' position is that since the B. R. T. is the undisputed representative of the yardmen on the remainder of the railroad, the men in other yards cannot be parties to the dispute.

No one doubts, of course, that the Board's authority extends only to the employees "involved" in a dispute. But the Act provides (Sections 2, Fourth and Ninth) that representatives are to be chosen by the majority of a craft or class, and obviously all the members of such a bargaining unit are involved in a dispute as to its representation.[36] This is true even if separate

[36] Petitioners imply (Br. p. 30) that the phrase "involved in a dispute" as used in paragraph Ninth defines or narrows the bargaining unit, which is the craft or class. The word "involved" obviously was designed to refer to the members of

portions of the same craft each unanimously favor a particular representative. If the employees at one end of a shop or yard (assuming a carrier with only one shop or yard) unanimously favor a particular labor organization, and those at the other end another union, it certainly could not be contended that there was no dispute as to the representation of the shopmen or yardmen, or that all the men at both ends of the shop or yard were not "involved."[37] Accordingly, if all the yardmen employed by the New York Central Railroad constitute a single craft or class, it is immaterial that a dispute may not exist among employees of the separate divisions.

Petitioners' argument that the men on some of the divisions are not involved assumes that each division constitutes a separate craft or class, and plainly can have no foundation otherwise.[38] Inasmuch as that is the precise point petitioners are seeking to prove, the argument begs the question.

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the craft or class, as distinct from outsiders, not to change the nature of the unit.

[37] We have presented a hypothetical case as to the outcome of which we believe there can be no reasonable dispute. Possibly petitioners would contend that if the mechanics at the north and south ends of a shop had previously been represented under separate agreements, they must continue to remain separate bargaining units. We do not believe that the words "craft or class" used in the Act can be given such a meaning.

[38] Petitioners state (Br. p. 26):

"* * * A group of employes satisfied with their own representation cannot reasonably be said to have a repre-

For the Board did not permit employees not "involved in the dispute" to vote unless it erred in holding all the New York Central yardmen to be a single craft or class.

2. *Interference with freedom of association and selection of representatives.*—Petitioners take the position that the Board's action in holding that all of the New York Central yardmen belong to a single craft or class unlawfully limits the employees' "freedom of association" and violates the provisions of the Act giving them the right to select representatives of their own choosing. For this proposition, petitioners first rely on the general purpose of the Act "to forbid any limitation upon freedom of association" (Section 2), and on the provisions prohibiting carriers from interfering with their employees' choice of representatives (Section 2, Third and Fourth). The interference with freedom of association to which these provisions refer consists of interference by the employer, as is apparent from the terms employed, their general context, and their legislative background.[39] They obviously have nothing to do with the scope of the bargaining unit.

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sentation dispute within the meaning of the Act with another group of employees who are satisfied with their representation."

If the two "groups" are in the same craft or class, which is the statutory bargaining unit, their designation of different representatives results in the very type of dispute which Section 2, Ninth, was intended to settle. The mere fact that two groups desire different representation does not make them separate bargaining units.

The provisions were reenacted or first inserted in the Act in 1934, when the majority rule provisions and Section 2, Ninth, in particular, which relate to that subject, were adopted. The majority rule principle is from its very nature inconsistent with absolute freedom of association on the part of employees, since it deprives a dissenting minority of its right to choose its own representative. Obviously the general provisions of the Act protecting the employees' right to self-organization were not thought to be incompatible with majority rule.

3. *The proviso in Section 1, Fifth.*—Petitioners argue that the Board was deprived of authority to determine the limits of the craft or class in this case by the proviso in Section 1, Fifth, of the Railway Labor Act—

> * * * That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

H. Rep. No. 1944, S. Rep. No. 1065, 73d Cong., 2d Sess.; House Hearings, pp. 23 *et seq.*; Senate Hearings, pp. 11, *et seq.* See *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548; *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515.

We fail to see how this proviso has any bearing upon the present case. Section 1, Fifth, defines "employee," for purposes of the Act, as including every person performing any work for a carrier defined as the work of an employee or subordinate official in orders of the Interstate Commerce Commission then in effect or as the same might be amended. (See p. 56, *infra*.) The purpose of the definition was obviously to indicate what persons were subject to the statute as a whole. The Interstate Commerce Commission had previously promulgated a classification of employees to be used in the filing of reports to the Commission,[40] and it was this classification which was referred to in the definition.

This minute classification of employees for reporting purposes has no relationship to the manner in which railroad employees are grouped into collective bargaining units. In order to avoid all doubts on this score, the proviso was added to the definition. The first clause provides merely that the Commission classification shall not be regarded as defining the crafts into which employees may be voluntarily organized.[41] The second clause, stating that "the jurisdiction or powers of such em-

[40] *Rules for Reporting Information on Railroad Employees, together with a Classification and Index of Steam Railroad Occupations*, issued by the United States Railway Labor Board and approved by the Interstate Commerce Commission (1921).

[41] See *Order of Railway Conductors* v. *National Mediation Board*, 113 F. (2d) 531 (App. D. C.).

ployee organizations" is not to be regarded as limited or defined by the provisions of the Act or the orders of the Commission, means only that the Act shall not limit the jurisdiction of labor organizations. Thus the Act would not prevent the engineers' union from representing the craft of conductors if both the union and the employees involved were willing. Obviously, neither of the clauses has any application to the present case, inasmuch as no one has held that the Switchmen's Union lacked jurisdiction to represent yardmen on the New York Central or made any attempt to follow the classification of employees made by the Interstate Commerce Commission.

Petitioners contend (Br. p. 39) that the carrier-wide definition of craft and class adopted by the Board deprived the Switchmen's Union of the right to represent employees on part of a road only. This does not limit the jurisdiction of the organization in the sense in which that expression is used in Section 1, Fifth. It is an inevitable concomitant of the principle of majority rule that no labor organization has the right to represent a minority of a craft or class. Section 1, Fifth, obviously was not intended to nullify the majority rule provisions of the Act.

Section 1, Fifth, was a part of the Railway Labor Act as originally enacted in 1926. At that time there was no provision in the Act equivalent to the present Section 2, Ninth, for the settlement of representation disputes through the hold-

ing of elections. The latter paragraph was inserted in the statute when it was revised in 1934.[42]

We think it clear that Section 1, Fifth, was never intended to preclude determination by the proper board of the limits of a craft or class as an aid to the effective settlement of representation disputes. Thus there can be no conflict between Section 1, Fifth, and Section 2, Ninth. If, how-

[42] Petitioners (Br. pp. 35–38, 41) gloss over the different origins of the Railway Labor Act of 1926, which did not contain the provisions defining the bargaining unit and authorizing the Board to hold elections, and the Act as amended in 1934, which is now before the Court. They refer to "the Act" as "the joint product of railway management and railway labor" (p. 35) and also to "the employees and their organizations, who are jointly responsible [with] railroad management for the provisions of the present law" (Br. p. 41). It is true that the 1926 Act was the product of such joint action. But the 1934 amendments were prepared by the Federal Coordinator of Transportation, and submitted and explained to Congress by him. They were opposed by the representatives of the carriers (House Hearings, pp. 122 *et seq.*; Senate Hearings, pp. 55 *et seq.*), including Mr. Walber of the New York Central (House Hearings, pp. 152–156), and also in certain respects, by some of the railway labor organizations (78 Cong. Rec. 12372), but were adopted in the form approved by Mr. Eastman. It is apparent that the understanding of the draftsmen of the 1926 Act, and the attitude of the organizations which they represent, do not reflect the meaning of the statute as amended in 1934. Mr. Donald Richberg, who is cited by petitioners (Br. p. 38), explained the 1926 Act to the congressional committees. His understanding as to the meaning of that statute is, of course, material and helpful. But it does not appear that he had anything to do with the provisions of the 1934 Act which are involved in this case.

ever, Section 1, Fifth, is to be construed in the manner suggested by petitioners, the Board would be deprived of its unquestionable [43] power to determine who may participate in elections whenever a "jurisdictional" question is raised. As the legislative history set forth in the opinion of Mr. Justice Rutledge (R. 184–188) shows, Section 2, Ninth, was intended to give the Board that very power. If there should be any conflict between the two sections, the specific provisions in the 1934 Act would, of course, take precedence over the earlier general clause. *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515, 563, and cases cited.

4. *Preexisting contracts.*—Petitioners have argued that the Board was bound to follow the grouping established in preexisting contracts between a carrier, or its predecessors, and its employees. In support of this position petitioners cite three decisions of the court below itself and one of the Sixth Circuit as in conflict with the decision below in the instant case.

All the judges of the Court of Appeals concurred in finding this argument unsound (R. 171, 181–182). Congress provided that the bargaining unit should be the "craft or class," a phrase which would not have been used simply to describe the units recognized under prior con-

[43] Many cases have upheld the Board's right to exercise this power. See note 23, p. 27, *supra*.

tracts. As has been pointed out, (*supra*, p. 35) an attempt to amend the Act so as to give effect to the craft boundaries previously established by contract was unsuccessful. It is clear, for example, that if in 1934 the shopmen and conductors on a railroad happened to be bargaining under a single agreement, presumably because they had chosen the same representative, they would, nevertheless, not be members of the same craft or class. In the same way, we think that the Act does not mean that every division of a carrier or every shop or yard must remain a separate bargaining unit merely because it was covered by a separate contract when the Act became effective. Nor does it mean that every portion of a large railroad which originally was operated by an independent company and whose employees accordingly once constituted separate crafts or classes must continue to be treated separately after the operations are merged with those of the larger unit. Many railroads have resulted from consolidations of numerous smaller lines, and we think it clear that Congress did not intend such non-existent operating units to form the basis for future craft or class representation.

Petitioners now argue (Br. p. 47) that acceptance of their position would not "freeze railroad labor in the contractual mould of 1934" but would permit a change in the bargaining unit if the "group" (not craft or class) covered by the con-

tract itself so desired. But the fact that a group covered by an existing contract wishes to remain a collective bargaining unit does not prove conclusively that it is a craft or class.

The cases on which petitioners rely do not make the preexisting agreements conclusive, but hold only that they are among the factors to be considered by the Board in determining the functional or occupational limits of the craft or class unit. *Brotherhood of Railroad Trainmen* v. *National Mediation Board*, 88 F. (2d) 757 (App. D. C.); *Brotherhood of Railway Clerks* v. *Nashville, C. & St. L. Ry. Co.*, 94 F. (2d) 97 (C. C. A. 6); *Order of Railway Conductors* v. *National Mediation Board*, 113 F. (2d) 531 (App. D. C.).[44] In this they have accepted the position of the Board as stated in its First Annual Report (p. 20).[45] Furthermore, these cases were not con-

[44] Petitioners contend that the decision below is inconsistent with *Brotherhood of Railroad Trainmen* v. *National Mediation Board*, 135 F. (2d) 780 (App. D. C.) decided by the same members of the Court of Appeals on the same day as the instant case. In that case the question was whether certain employees belonged to the craft of yardmen or the craft of conductors. Since there was no dispute as to the representation of either craft as such, irrespective of which the employees in question belonged to, the court upheld the Board's decision that there was no representation dispute within the meaning of Section 2, Ninth, and that accordingly the Board had no jurisdiction.

[45] The first of the above cases referred with approval to the statement in the Board's report. The test applied by the Board was amplified in National Mediation Board, *In the Matter of Representation of Employees of the Delaware*,

cerned with the geographical division of the employees into bargaining units but with how the line should be drawn between men engaged in different types of work; there was no occasion for the courts to consider the legislative history directly bearing on the question of geographical division.

Respectfully submitted.

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OCTOBER 1943.

Lackawanna & Western Railroad Company, Cases M–199 and R–358, Aug. 13, 1937, as follows (pp. 7–8):

"When it became necessary for the Board to determine those eligible to participate in the selection of representative by the majority of the craft or class, the Board has been guided by these general principles:

"(a) To follow, so far as practicable, the past practice in grouping of employees for representation purposes;

"(b) To consider the nature of the employment, supervision, practicable lines of promotion and demotion, with accompanying seniority, to develop on the one hand protection of the employees from arbitrary action of management and a definite line of development of employees with a view to efficient operation.

"(c) The public interest in preventing interruptions of commerce.

APPENDIX

The pertinent provisions of the Railway Labor Act of 1926, 45 Stat. 577, as amended in 1934, 48 Stat. 1185, 45 U. S. C., Secs. 151, *et seq.*, read as follows:

> SECTION 1. When used in this Act and for the purposes of this Act—
>
> First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided, however,* That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party in-

terested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

* * * * *

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

* * * * *

GENERAL PURPOSES

SEC. 2. * * * (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to for-

bid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

* * * * *

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. * * *

* * * * *

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the

same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

* * * * *

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No. 48

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

SWITCHMEN'S UNION OF NORTH AMERICA, ET AL., *Petitioners*,

v.

NATIONAL MEDIATION BOARD, GEORGE A. COOK, WILLIAM M. LEISERSON and HARRY H. SCHWARTZ, and BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF FOR THE RESPONDENT BROTHERHOOD OF RAILROAD TRAINMEN.

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OPINIONS BELOW.

The district court rendered no opinion; its findings of fact and conclusions of law are found at R. 76-81. The opinions of the United States Court of Appeals for the District of Columbia (R. 160-193) are reported at 135 F. (2d) 785.

JURISDICTION.

The judgment of the Court of Appeals for the District of Columbia was entered on February 15, 1943. The petition for certiorari was filed April 16, 1943, and granted May 24, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended.

STATUTE INVOLVED.

The statute involved is the Railway Labor Act, as amended, in 1934 (48 Stat. 1185, 45 U. S. C., Section 151, et seq.). The pertinent provisions of the Act are set forth in the Appendix, *infra*, pp. 27-28-29.

STATEMENT.

Since this is covered in the majority opinion of the Court of Appeals, as well as the brief of the Mediation Board, it is not here repeated, except to correct some inaccuracies in the petitioners' statement.

The Mediation Board announced its findings in somewhat different language than used by the petitioner.

The Board held interalia as follows: (R. p. 46):

> "Note that the Act Speaks of a majority of a craft or class determining "who shall be the representative" (not the representatives). The subjects "craft or class" and "representative" are both given in the singular number.
>
> The Board does not undertake to discuss the relative advantages or disadvantages which may inhere in single or divided representation respectively. Doubtless serious arguments may be made both for and against each method. The Act leaves the Board in no doubt that Congress had in mind single representation for each craft or class on each carrier when enacting it; and that had the Congress thought of sub-divisions of a craft or class or of a carrier as desirable methods of representation it would have made provision for their use.

Finally, the Board concludes as a matter of law that the Railway Labor Act vests the board with no discretion to split a single carrier or combine two or more carriers for the purpose of determining who shall be eligible to vote for a representative of a craft or class of employees under Section 2, Ninth, of the Act, and the argument that it has such power fails to furnish any basis of law for such administrative discretion."

On page 4, petitioners' brief it is stated:

"It was evident therefore that at the outset a majority of all yardmen employed by the New York Central Railroad Company would vote for the Brotherhood."

(this argument being based upon the fact that 3653 yardmen of the 6087 yardmen who were then employed on the New York Central Railroad were covered by Brotherhood contracts). This reasoning pre-supposes that all of the yardmen covered by the Brotherhood contracts were satisfied and none would vote for a change of representation.

QUESTIONS PRESENTED.

This Court in its order granting certiorari in this and three other cases involving the Railway Labor Act, certified four questions for counsel to discuss in their brief and upon oral argument, so far as applicable in each case. The two applicable in this are:

I. What bearing, if any, the Norris-LaGuardia Act has upon the propriety of granting the relief sought.

II. Whether the District Court had jurisdiction to review the certification of the Board.

III. The question presented on its merits is whether under the Railway Labor Act all the yardmen of a single carrier must be treated as members of a single craft or class for the purposes of collective bargaining.

SUMMARY OF ARGUMENT.

I.

The respondent, Brotherhood of Railroad Trainmen, concurs fully with the position taken by the respondent, National Mediation Board as to the bearing, if any, of the Norris-LaGuardia Act upon the relief sought.

II.

No provision is contained in the Railway Labor Act permitting suits to review the decision of the National Mediation Board or to set aside certifications made by the Board. Under the general equity power the court could only interfere with a decision in the event it were arbitrary or capricious and not based on substantial evidence or if not within the jurisdiction of the Board.

III.

After the Board found that the New York Central Railroad Company was operated as a single carrier, it could not as a matter of discretion break down the class or craft of yardmen within this carrier (there being no dispute as to the functional or occupational work of yardmen) into geographical segments or units for the purpose of making separate bargaining units.

(a) The decision of the Board that as a matter of law the craft or class of yardmen within the meaning of the Act was carrier wide is supported by those who favored, as well as those who opposed this provision before the Congressional Committees, and was obviously in line with the policy they wished to adopt.

(b) The petitioners' argument[1] that:

> "The real controversy was between the two organizations, namely, the Brotherhood and Switchmen's Union, with the former contending for a single repre-

[1] Br. p. 9.

> sentation for all yardmen on the New York Central Railroad * * * and the latter for a continuance of representation by separate *parts* of the New York Central Railroad as reflected by the contracts of the two organizations then in effect. * * *" (emphasis ours.)

ignores the obvious fact that under the Railway Labor Act employees can only act through their representative or organization.

(c) There is substantial evidence that yardmen covered by contracts of the Switchmen's Union were disputing the right of that organization to continue to represent them. Aside from the two different instances (R. 123-124) it seems apparent that since there were approximately 3653 yardmen covered by Brotherhood contracts (R. 35) and the Brotherhood presented with the invocation 4,749 signed authorizations to the Mediation Board (R. 35), a substantial number of men covered by Switchmen's contracts desired other representation.

(d) Petitioners' contention on page 10 of their brief that

> "The words which are impliedly omitted in Section 2, Fourth, are the following italicized words 'the majority of any craft or class of employees' *who are involved in a dispute* "shall have the right to determine who shall be the representative of the craft or class for purposes of this Act,"

does not help petitioners' position without adding another far-fetched implication namely, the majority of *a portion of* any craft or class of employees; it is submitted that neither of these two "implications" can be read into Section 2, Fourth, in view of the contrary positive intent that the representation be carrier wide as shown by those who favored as well as those who opposed the 1934 amendments.

(e) In order to determine "who are involved in a dispute" it is necessary to determine what the carrier is: different groups of yardmen included in the carrier, who can-

not agree upon the same representative, are involved in the dispute.

IV.

The petitioners' argument under point IV (Br. 11) that

> "The action of the Board in voting all the yard men of the New York Central Railroad Company to determine a single representation constituted an unlawful limitation upon the 'freedom of association among employees' and unauthorized interference with the right of employees to designate and bargain collectively through represetnatives of their own choosing."

attempts to read into Section 2, Fourth, intended to prevent *Carrier* interference, a limitation that would apply to *groups of yardmen* on a single carrier who could not agree upon single representation.

It is stated by the Petitioners (Br. p. 11):

> "The act intends that groups which have chosen to bargain as units may continue to do so. This interpretation is clearly supported by the decisions of the Courts."

No where in the act is the word "group" used nor has the petitioner cited any cases where the word "group" was interpreted to mean a craft or class less than carrier wide. The cases cited by the petitioners referring to craft or class all deal with employees in a functional rather than geographical scope. In the present case there is no dispute as to the functions of yardmen.

ARGUMENT.

I.

The Application of the Norris-LaGuardia Act to this Case.

The Court has asked the parties to discuss "what bearing, if any, the Norris-LaGuardia Act has on the propriety of granting the relief sought."

The respondent, Brotherhood of Railroad Trainmen, concurs fully with the position taken by the respondent, National Mediation Board, as to the bearing, if any, of the Norris-LaGuardia Act upon the relief sought.

II.

The Jurisdiction of the District Court.

The Court in its order granting certiorari, requested the parties to discuss whether the District Court had jurisdiction to review the certification of the National Mediation Board.

The amended complaint (R. 5), purports to be brought under the Railway Labor Act and also under the general equity jurisdiction of the District Court.

There are no provisions in the Act entitling any party to a review of the decision of the Board, nor is there any provision entitling the petitioners to bring an action setting aside the certification of the Board. The point to be determined, therefore, is whether or not this comes within the general equity jurisdiction of the District Court of the District of Columbia.

It is the position of the petitioners that there are two aspects to the question of the Court's jurisdiction to review the Board's certification, one being whether the certification both as to facts and law, is wholly immune from judicial review and the second being whether the court could exercise its general equity jurisdiction to entertain this particular suit. There seems to be little doubt that the factual finding of the Board is conclusive, provided it is based on a proper hearing, unless the decision of the Board is arbitrary and capricious.[2]

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[2] Brotherhood of Railroad Trainmen v. National Mediation Board, 88 F. (2d) 757 (App. D. C.); National Federation of Railway Workers v. National Mediation Board, 110 F. (2d) 529 (App. D. C.) certiorari denied, 310 U. S. 628; Order of Railway Conductors v. National Mediation Board, 113 F. (2d) 531 (App. D. C.); Brotherhood of Locomotive Firemen and Enginemen v. Kenan, 87 F. (2d) 651 (C. C. A. 5) certiorari denied sub nom Grand Inter-

The case of *Shields* v. *Utah Idaho Central Railroad*, 305 U. S. 177, cited by the petitioners as authority for the proposition that the court has authority to review a determination by the Interstate Commerce Commission, despite the absence of any provision in the Act for review of such determination, is not authority for such proposition. In this case the Mediation Board, through authority conferred on it by Section first of the Act, requested the Interstate Commerce Commission to determine whether the Utah Idaho Central Railroad Company was an interurban electric railway. The Interstate Commerce Commission found that it was not and the Mediation Board therefore ordered the railway to post formal notice prescribed by section 2, eighth, of the Railway Labor Act. The railway did not comply; the Act provided that failure to do so subjected the carrier to criminal penalty, whereupon the railway brought suit against the United States Attorney for the District of Utah, to restrain him from prosecuting any proceeding based on the alleged violation of the Act. The District Court took jurisdiction, permitted the railway to try the matter de novo, decided it was an interurban electric railway and granted a permanent injunction, which the Circuit Court of Appeals for the 10th circuit affirmed.[3] This Court granted certiorari and reversed the decision below, remanding the case with directions stating at page 185:

> "The sole remaining question would be whether the Commission in arriving at its determination, departed from the applicable rules of law and whether its find-

---

national Brotherhood v. Kenan, 301 U. S. 687; Nashville, C. & St. L. Ry. v. Railway Employees' Dept. 93 F. (2d) 340 (C. C. A. 6) certiorari denied 303 U. S. 649; Brotherhood of Railway Clerk v. Nashville & St. L. Ry. Co., 94 F. (2d) 97 (C. C. A. 6); Brotherhood of Railway Clerks v. Virginian Ry. Co., 125 F. (2d) 863 (C. C. A. 4). National Federation of Railway Workers v. National Mediation Board, *supra*; cf. Virginian Ry. Co. v. System Federation No. 40; 300 U. S., at 562.

[3] 95 F. (2d) 911.

ing had a basis in substantial evidence or was *arbitrary* and *capricious*. This question must be determined upon the evidence produced before the Commission * * *." (Emphasis ours.)

and at page 187:

"It cannot be said upon this evidence and the related facts summarized in the Commission's report that the Commission's determination lacks support or was arbitrary and capricious. Nor is there ground for holding that the Commission in reaching its determination, departed from applicable principles of law * * *."

The case of *Virginian Railway* v. *System Federation #40*, 300 U. S. 515, deals mainly with the question of whether or not an injunction should be granted against the Virginian Railway Company preventing them from entering into any employment contract, except with the employees' true representative, and such review as the Court made of the Board's findings were for the purpose of determining whether or not the Board committed errors of law.

In any event it appears that the petitioners are asking for a review of the certification "at least to the extent of determining whether it is predicated upon an error of law."[4]

[4] Petitioner's brief, page 20.

III.

After the Board Found that the New York Central Railroad Company Was Operated as a Single Carrier, it Could Not as a Matter of Discretion Break Down the Class or Craft of Yardmen Within this Carrier (There Being No Dispute as to the Functional or Occupational Work of Yardmen) Into Geographical Segments or Units for the Purpose of Making Separate Bargaining Units.

The Mediation Board found on the facts after a full hearing at which considerable testimony was taken that the New York Central Railroad, including the lines which it operated as lessee, was operated as a single carrier within the meaning of the Railway Labor Act, and that the lessor lines had no employees, said lines having leased all of their equipment to the New York Central Railway on long term leases. The petitioners argued below that the finding of the Board on this point was not supported by substantial evidence but have apparently abandoned their contention as to this phase of the Board's findings.

The remaining question presented is whether under the Railway Labor Act in the event as to a dispute as to representation, the National Mediation Board can as a matter of discretion break down the craft or class of yardmen within a carrier into geographical segments or units for the purpose of making separate bargaining units of each segment, after the Board has found that the carrier consists of all these segments.

It is conceded that the Switchmen's Union and the Brotherhood of Railroad Trainmen (hereinafter referred to as B. R. T.) could not reach an agreement through the efforts of a mediator assigned by the Board as to the proper bargaining unit. It is the contention of the Switchmen, however, that this would not constitute a dispute among the carrier's employees. It should not require argument to make obvious the fact that employees act only through

their representatives. 4749 yardmen of the New York Central Railroad of approximately 6087 yardmen then employed by it signed authorization cards which were presented to the Board with the B. R. T. application (R. pp. 35-36, 137-138).

The petitioners states however (Br. p. 24):

> "There is no conclusive evidence in the record which discloses that any of the yardmen covered by the contracts of the Switchmen's Union questioned or disputed the right of such union to represent them".

This statement ignores the testimony of a B. R. T. representative who testified before the Board that there had been a dispute in January, 1940; that he received a petition addressed to him from 38 yardmen of the former Michigan Central at Toledo, out of a roster of 56 men, requesting representation by him because they were denied the right of having a local committee by the Switchmen's Union (R. 123-124). Also his testimony (R. 124) that:

> "700 employees in train, yard and engine service and among the car men at Detroit, had filed a petition to the C. I. O. for representation".

This statement also ignores the fact that the authorizations presented by the B. R. T. included 479 yardmen on the former Michigan Central Lines West of the Detroit River on which all the yardmen in the United States are represented by the Switchmen (the Michigan Central Lines East of the Detroit River being in Canada and not involved in this dispute) (R. 35). The records of the Mediation Board (R. 35) show 4749 authorizations were presented with the petition for invocation and further that 3653 yardmen were covered under the B. R. T. contract. It thus appears that a very large number of yardmen covered by contracts of the Switchmen's Union "questioned or disputed the right of such union to represent them."

While it is true that the B. R. T. in its invocation used the term New York Central *System*[5] this was amended by the B. R. T. to New York Central *Railroad*, which distinction is important, since there are a number of roads in which the New York Central has a substantial stock interest but does not operate and which roads are not involved in the present dispute and were not voted or considered by the Mediation Board.

In determining whether or not a dispute existed, it is first necessary to determine who the employees are. Since the The New York Central Lines East, New York Central Lines West, Toledo & Ohio Central, Michigan Central, Cleveland, Cincinnati, Chicago & St. Louis, and Boston and Albany have no operating employees and employ no yardmen, the boundary lines of these leased lines can have no particular significance. In the event of a dispute as to working conditions or rates of pay, etc., the representative of these employees, whether it be the Switchmen or the B. R. T., could not negotiate changes in rates of pay or contract conditions with these leased lines, because the employees are in fact, paid by the New York Central Railroad their employer, and since the Mediation Board has found that the New York Central Railroad and its leased lines is the carrier in this case, it seems apparent that the dispute existed among the employees of the New York Central Railroad. The argument of the petitioners, made on page 26 of their brief that

> "a group of employees satisfied with their own representation cannot reasonably be said to have a representation dispute within the meaning of the Act, with another group of employees who are satisfied with their representation"

ignores the findings of the Board as to who the carrier is and attempts to substitute in lieu thereof, allegedly satisfied *groups* within a carrier.

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[5] R. 28.

It is significant that the word "*group*" used by the petitioners was also used in the proposed amendment by Mr. Clements, Chairman of Committee on Railroads designated to deal with the proposed amendments to the Act, in unsuccessfully attempting to persuade the Senate Committee on Interstate Commerce to amend Section 2, Ninth, as follows, by adding the italicized words and omitting the words enclosed in brackets:[6]

> "If any dispute shall arise between a carrier's employees *or a group thereof* as to who are the representatives of such employees *or a group thereof* * * *, it shall be the duty of the Mediation Board * * * (etc.). * * * Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the (craft or class) *such employees or group thereof* for the purposes of this Act."

As pointed out in the petitioners' brief at page 28, the original enactment of this Act in 1926 did not contain any provision giving the majority the right to determine representation, which was remedied by the passage of extensive amendments, passed by Congress and approved June 21, 1934. Among these amendments were provisions for action by the Board to settle a dispute over representation, and Section 2, Ninth, expressly created the duty and authority of the Board in this respect, which provides:

> "*If any dispute shall arise among a carrier's employees* as to who are the representatives of such employees, designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. * * *" (*Emphasis ours*)

[6] Hearings before Senate Committee on Interstate Commerce, on S.3266, 73rd Congress, Second Session, 1934.

It will be seen this paragraph states that "if any dispute shall arise among the carrier's employees". The petitioner's contention is that this should be interpreted to mean "if any dispute shall arise among various groups of a carrier's employees" and proceeds to argue from this that even though these groups be members of the same craft or class (yardmen) still the dispute can only exist as to these groups and only these groups can be polled in the event of a representation election. This was not the intention of either those who favored or opposed the 1934 amendments and an additional amendment proposed to meet the situation in the instant case, was not enacted. It is apparent the deliberate refusal to adopt this amendment was in line with the policy adopted by Mr. Eastman, then Federal Coordinator of Transportation, to make it unnecessary for the carrier to deal with more than one representative of a given craft or class.

It has been the practice of the Board to require that signed authorizations be presented with an invocation for its services in a representation dispute and unless the authorizations constitute a majority of the craft or class of the carrier, the Mediation Board will refuse its services. This practice of the Board would seem to take care of the situation suggested by Justice Rutledge in his dissenting opinion:[7]

> "* * * It makes the Act an invitation and an instrument for creating labor strife, especially in stirring up jurisdictional disputes. It gives this weapon to, and throws the whole weight of the legislation in favor of, the big unions as against the smaller ones. All that is needed for ouster of the latter is to cause some employee to question or 'dispute' their right to act as representative, which a large union can always do. * * *"

Since the Board requires a majority of authorizations to be presented before it will investigate the dispute or hold

[7] R. 182.

an election, it would seem that a majority of the carrier's employees would have to be involved in the dispute.

The argument of petitioners that the words which are "implied" but omitted in Section 2, Fourth, are the following italicized words:

> "The majority of any craft or class of employees *who are involved in a dispute* shall have the right to determine who shall be the representative of the craft or class for the purpose of this Act."

does not help the petitioner's position without adding another "implication", namely:

> "The majority of any class or craft of employees *less than carrier wide* * * *"

The petitioner's argument does, however, serve to illustrate the ease by which this section could have been amended to substantiate petitioner's contention but as stated, amendments to cover this situation were not enacted.

Evidence produced before the Board shows that in most cases the present lessors to the New York Central Railroad were themselves lessees of smaller roads.[8] Had these smaller roads held agreements which encompassed the boundary lines of the original lessor corporations and were these agreements in effect at the time of the 1934 amendments, the classes or crafts would have been frozen into this contractual mold from which they could never vary, should the position of the petitioners be adopted on this point and which position, as Justice Rutledge pointed out in his dissenting position, was too rigid. As stated in petitioner's brief, page 39, the Switchmen's contract covers yards rather than craft. By reference to the findings of the Mediation Board (R. 35), it will be seen that there are large numbers of yards on various segments of the New

[8] R. 33-34.

York Central Railroad. In the event of a representation dispute on these various yards, were the yards polled individually, it is conceivable the railroad would be forced to deal with a different employee representative for each yard, which was the exact thing Mr. Eastman wished to avoid.

The petitioners state at page 33 of the brief:

> "The great railroad systems such as the New York Central, Pennsylvania, and the Southern Pacific (to mention only a few) are the products of consolidation of many small railroads. They operate over such vast stretches of territory, involving so many different operating and climatic conditions, that separate operating divisions are inevitable and necessary to efficiency. Some of these are essentially the maintenance of earlier separate companies. Some of them are the results of a later division of managerial powers. But the record of the proceeding before the Board is replete with evidence of the fact that employees may belong to the same craft, but work on different sections of a railroad system, hundreds of miles apart, subject to localized management, dealing with local conditions, working under contracts that, because of local conditions or historical development, vary in their terms and application and that such employees when they work, for example, on the Boston & Albany operating from Albany east, will not be in any real way *involved* in a dispute which may arise on the Michigan Central Railroad or New York Central-Lines West."

The fact is that the Pennsylvania Railroad has *one* contract covering all yardmen and trainmen which had its inception in 1920 (R. 101), and another contract covering all yardmen on the entire Pennsylvania Railroad was entered into with the B. R. T. on September 16, 1942, copy of which is on file with the Mediation Board. It is significant that the contract previous to the present one was in effect for 15 years. Indeed, the New York Central itself recognized the wisdom of having one contract on the entire system by entering into a contract with the B. R. T. affecting all din-

ing car stewards on the New York Central System and are endeavoring to negotiate a uniform contract covering cooks and waiters (R. 149). Mr. Walber (R. 150) referring to train dispatchers and railroad telegraphers, states:

> "When it becomes necessary to negotiate changes in the New York Central agreement, special arrangements are usually made for joint handling for the New York Central and Big Four."

It should not require any argument to indicate the desirability of having one contract with one representative affecting a particular craft, rather than many contracts with many organizations covering each yard or so-called local condition. The very purpose and basis of the Railway Labor Act as indicated not only by Sec. 2, Fifth, but by the hearings which took place before the various committees on the 1934 amendment, all of which are quoted in detail in the brief of the Mediation Board, show conclusively that the simplification and avoidance of friction between the employers and employees was one of the underlying purposes of the passage of the 1934 amendments to the Railway Labor Act.

The "local conditions" mentioned by the petitioner (Br. p. 39) are not pointed out by it. The principal things affecting yardmen are rates of pay, hours of service, seniority rosters, overtime provisions, the handling of grievances, duties involved and promotions; these conditions are of paramount concern to yardmen whether employed on the New York Central Lines West or the Michigan Central, West of the Detroit River. The record of hearings before the Mediation Board will indicate that very rarely do conditions arise in one yard wholly foreign to conditions in another, but the converse is true, that so-called "local condition" are the basis used for contracts governing all yardmen, as indicated by the evidence of one contract on the Pennsylvania Railroad affecting all yard conductors, road and yard brakemen, baggagemen, assistant ticket collectors, etc. (R. 101).

It is agreed that the Act was designed to promote industrial peace, which, as recognized by Mr. Eastman, would be promoted by having one representative for one craft for one carrier.

The question as to whether or not the bargaining unit was to be carrier wide was one for the determination of Congress. There can be no doubt that Congress knew that the provisions of the Railway Labor Act required the bargaining unit to be carrier-wide, because it was recognized at all committee hearings that an amendment was necessary to make it less than carrier wide and Commissioner Eastman gave definite reasons why he wanted it to be carrier wide. Since Congress, while recognizing the need for amendments to make the unit less than carrier wide, passed the 1934 Sections *without* these amendments, it would seem conclusive that Congress intended no discretion be given to the Mediation Board in the determination of the bargaining unit.

This Court said in *Shields* v. *Utah Idaho Central Railroad Company*, 305 U. S. 177, in considering the Interstate Commerce Commission's determination as to whether or not the Utah Idaho Central Railroad was an interurban line, and as such, exempt from the provisions of the Railway Labor Act, that:

> "In considering the effect of the Commission's determination, the fundamental question is the intent of Congress".

Had Congress intended to give this discretion to the Board, it could have very easily done so by the adoption of any one of a number of amendments proposed either by Mr. Walker, Vice-President of the New York Central Railroad[9] or Mr. Clements, Chairman, Committee for Railroads to deal with 1934 amendments to Railway Labor Act,[10] who testified at the committee hearings as to the effect of the 1934 amend-

[9] R. 179.

[10] R. 179-180.

ments, or by supplying the words which the petitioners contend were *implied*.

A comparison of the National Labor Relations Act, where the authority was specifically delegated to the National Labor Relations Board to select appropriate units, with the Railway Labor Act is enlightening.

Title 29, Section 159, U. S. C., paragraph (a) provides:

> "Representatives designated or selected for purposes of collective bargaining by a majority of the employees *in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit* for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment * * *"

Paragraph (b) provides:

> "The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of sections 151-166 of this title, *the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.*

In the Railway Labor Act itself we find that Congress specifically gave to the Mediation Board the right to require of the Interstate Commerce Commission, the determination of whether or not a railroad was an interurban line,[11] even though Congress omitted any definition of an interurban line and it seems a far-fetched argument to state that while it gave definite duties involving discretion to the Mediation Board and the Interstate Commerce Commission in the illustration just given, it intended, but failed to do so, in the case of fixing less than the carrier wide unit, even though everyone at the committee hearings recognized amendments were necessary to give this discretion.

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[11] Section 1, First, Railway Labor Act.

In the case of *Virginian Railway Company* v. *System Federation No. 40*, 300 U. S. 515, this Court said at page 553:

> "The Railway Labor Act, paragraph 2, (45 U. S. C. A. paragraph 151-a), declares that its purposes, among others are to avoid any interruption to interstate commerce or to the operation of any carrier engaged therein * * * It was for Congress to make it possible and the means by which its objective of securing uninterrupted service of interstate railroads was to be secured and its judgment supported as it is by long experience with industrial disputes, the history of railroad labor relations, to which we have referred, is not open to review here".

In view of the purposes of the Railway Labor Act, is it not reasonable to suppose that these purposes would best be served by having a railroad deal with one representative representing one craft, rather than force it to have many agreements with many separate organizations representing the same craft, which, should the petitioner's contention be adopted, could be a separate organization for each yard. Indeed, Commissioner Eastman's very words were[12]:

> "* * * When it comes to collective bargaining in the matter of wages and working conditions, it seems to me plain that a company ought not be compelled to deal with more than one organization. It ought not to have to make bargains with two or three different organizations. * * *

IV.

Section 2, Third and Fourth Intended to Prevent Carrier Interference, Not Applicable Here.

Petitioners state (Br. p. 35) that the Act as presented to Congress was a joint product of Railway Management and Railway Labor. While this is true as to the original Act

[12] Hearings before House Committee on Interstate and Foreign Commerce on H. R. 7650, Railway Labor Act, Amendments, 73d Cong., 2nd Sess. Page 44.

passed in 1926, it appears that Mr. Eastman, who was then Federal Coordinator of Transportation, urged the adoption of the 1934 amendments, embodying Section 2, Ninth for the purpose of facilitating dealings between railroads and employees.

The purposes as set out in Section 2 of the Act as amended plainly relates to carrier coercion.

Section Third deals with coercion by either party.

Section Fourth

> Employees *shall have the right* to organize and bargain collectively through representatives of their own choosing. The *majority* of any craft or class of employees shall have the right to determine who shall be the *representative* of the craft or class for the purposes of this Act * * *

is pertinent because of the portion emphasized. (Italics ours.)

If the interpretation that the petitioner places upon section 1 Fifth were adopted, it would render meaningless Section 2, Ninth, passed in 1934. It appears, however, that the only purpose of this section was to preclude the minute classification[13] made by the Interstate Commerce Commission from in any way being binding upon employees.

The petitioner points out that the importance of this provision was overlooked in the consideration of this matter by the Board. Perhaps a better explanation would be that the Board, as well as the courts below, did not consider it applicable.

The explanation of Mr. Richberg in his testimony before the House Committee on Interstate and Foreign Commerce regarding the bill as proposed in 1926[14], is enlightening:

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[13] Rules for Reporting Information on Railroad Employees, together with a Classification and Index of Steam Railroad Occupations, issued by the United States Railway Labor Board and approved by the Interstate Commerce Commission (1921).

[14] House Committee Hearings on H. R. 7180, January 26, 27, 1926, p. 64. Petitioner's Brief, Note 14, page 38.

> "There is absolutely nothing in this Act which gives any special privilege or aid to any organization, except this and that is that if an organization is of the type that the employees themselves want, it will strengthen that organization because they have a right to be represented as they see fit. If it is of the type that they do not want, it will weaken that organization. In other words it must stand on its own merits."

Mr. Richberg realized the Act intended majority representation. It is apparent that the B. R. T. is the type of organization that the employees themselves want and according to Mr. Richberg's explanation, they have a right to be represented as they see fit. No where in this explanation can it be found that "they" means employees on a particular segment of a railroad and in view of the explanation given, not only by Mr. Richberg, but others at the various committee hearings and the refusal of Congress to embody any provisions in the 1934 amendments to the Railway Labor Act limiting the unit to any particular portion of a carrier, it is obvious this was not intended.

The interpretation of "far reaching consequences" placed upon Mr. Walber's testimony by the petitioner (Br. p. 39) (he having testified of many instances of more than one organization representing the same class of employees on different parts of the *system*) overlooks the fact that we are not now dealing with the New York Central *System* but the New York Central *Railroad* and does not take into consideration the fact that Mr. Walber himself realizes the value of having one contract with one craft whenever possible. (Supra p. 17.)

In making the argument that the effect of the ruling of the Board is to destroy valuable rights of self organization of the employees because organizations will be compelled to create or maintain an organization covering an entire railroad system so that they can at all times obtain a majority vote of all employees of one craft in support of their representation, the petitioners overlook the fact that rail-

way labor organizations are intended to be primarily for the benefit of their members and these members would be benefitted by being represented by an organization negotiating for all the members of one craft or class. The majority would be taking the minority into their fold and any contract negotiated for the benefit of the stronger would, naturally, include the weaker, who had then become members of the stronger. The railroad would not have the advantage of playing one organization against the other, as so often happens in dealings with rival organizations representing the same craft or class, but the railroad would, in turn, have the advantage of being able to negotiate with one rather than many organizations for the same craft or class.

It is stated by the petitioners (Br. p. 47):

> "Petitioners contend that employees should be permitted to establish the bargaining unit in the exercise of their right of self-organization. Thus, whenever a group of employees covered by a contract desire to change their bargaining unit and combine with some larger unit, they may do so if a majority of the employees involved desire to make the change."

The majority of the yardmen of the New York Central Railroad desire Brotherhood representation and unless there is some magic in the word "involved", heretofore unexplained, the petitioners are attempting to prevent the employees of the carrier from doing the very thing they wish to do.

If the petitioners had agreements in effect at the time of the passage of the Railway Labor Act or amendments, they certainly would not, by virtue of these agreements, obtain any vested right which would enable them to have the boundary lines encompassing the yardmen involved in the agreement, indelibly fixed. By way of illustration, suppose one of the lessor corporations had then sold a part of its line, lock, stock and barrel, to another railroad company. Could it be claimed that, notwithstanding the fact that the

original lessor corporation is now owned by two separate companies, the group as covered by the original contract could not be changed; and if it could not be claimed, should this principal apply when all the equipment is leased and the lessor company ceases to have any operating employees? The majority opinion of the Court of Appeals treats the petitioners' contention in this regard as follows:[15]

> "Appellants admit that, were there no separate existing contracts as here, the action of the Board in unifying the Railroad Company might be proper; but that, as it is, the Board is confined to the dispute of the particular division under the existing contract. We believe appellants come close to admitting themselves into a losing position. The Act plainly provides that the *majority* of any craft or class shall determine *the representative* (not representatives) of the craft or class for the purposes of the Act. Appellants cannot complain of interference with their contracts if the provision is a lawful exercise of Congressional authority. Their contracts were necessarily made subject to that authority. It is an established principle that appellants must be considered to have made their contracts in contemplation of the contingency that they might be invalidated by a proper exercise of legislative power."

CASES CITED BY PETITIONER.

The conflict claimed by the petitioners in the case of *B. R. T.* v. *National Mediation Board*, (88 F. (2d) 757) does not support their position, since this case dealt with the question as to whether brakemen who spent the larger portion of their time as road conductors were eligible to vote as such, for representation. The court's referring to established custom, plainly relates to occupational and not territorial scope. The case was reversed because no hearing was granted by the Board and, therefore, its action was termed arbitrary and capricious.

[15] R. 171.

The case of *Brotherhood of Railway and Steamship Clerks, etc.* v. *N. C. & St. L. Railway* (94 Fed. 2nd 97), decided in 1937 by the United States Court of Appeals for the 6th Circuit, had to do with the question of whether or not employees who performed laboring work were to be included under the craft of clerks. It will thus be seen that this had to do with functional rather than geographical scope.

The third case cited is that of the *O. R. C.* v. *National Mediation Board* (113 Fed. 2nd 531). This case dealt with the question of whether or not the Board was arbitrary and capricious in determining that yard conductors, yard brakemen or helpers and switch tenders constituted the craft or yardmen and the court held it was not so, in view of the fact that yardmen had considered this group embraced in the term. The Board had, previous to its final determination, before a hearing, certified the O. R. C. as representing part of this group but, after a hearing, determined their previous decision was wrong. The court said at page 534:

> "New employees began as brakemen or trainmen interchangeably on the road and in the yard. After a year they may take examinations for promotion to yard foreman and road flagman. * * *"

When these employees are on the road, they might travel over a large portion of the railroad, which appears to be another valid reason for having carrier wide crafts.

All these cases were cited by the petitioner in the brief in the Court of Appeals and the majority decision of the Court of Appeals [16] disposed of the claims made for them as follows:

> "Appellants have cited cases which hold that Congress intended employees to be given the right to retain the crafts or classes as they were formerly recognized or established by mutual agreement between employee and carrier. It is sufficient, however,

[16] R. 173.

to say that these cases were concerned with disputes as to the craft or class to which the nature of an employee's work entitled him to belong, and not with the area which was to be considered the compass of that craft or class".

CONCLUSION.

It is submitted that the judgments of the lower Courts should be affirmed.

Respectfully submitted,

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Attorneys for Respondent Brotherhood of Railroad Trainmen.

APPENDIX.

The pertinent provisions of the Railway Labor Act of 1926, 45 Stat. 577, as amended in 1934, 48 Stat. 1185, 45 U. S. C., Secs. 151, *et seq.*, read as follows:

SECTION 1. When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided*, however, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

* * * * * * * * *

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby

conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

* * * * * * * * * *

SEC. 2. * * *

GENERAL PURPOSES.

(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

* * * * * * * * * *

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. * * *

* * * * * * * * * *

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such

employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election, and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

* * * * * * * * *

dis. p. 11.

SUPREME COURT OF THE UNITED STATES.

No. 48.—October Term, 1943.

Switchmen's Union of North America, in its Own Right, etc., T. C. Cashen, et al., Petitioners,
vs.
National Mediation Board, George A. Cook, William M. Leiserson, et al.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[November 22, 1943.]

Mr. Justice Douglas delivered the opinion of the Court.

This is an action by the petitioners, the Switchmen's Union of North America and some of its members against the National Mediation Board, its members, the Brotherhood of Railroad Trainmen, and the New York Central Railroad Company and the Michigan Central Railroad Company. The individual plaintiffs are members and officials of the Switchmen's Union and employees of the respondent carriers.

Petitioners were plaintiffs in the District Court. A certification of representatives for collective bargaining under § 2, Ninth of the Railway Labor Act (44 Stat. 577, 48 Stat. 1185) was made by the Board to the carriers.[1] This certification followed the invocation of the services of the Board to investigate a dispute among the yardmen as to their representative. The Brotherhood sought to be the representative for all the yardmen of the rail lines operated by the New York Central system. The Switchmen contended that yardmen of certain designated parts

[1] Sec. 2, Ninth provides: "If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirments of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to

of the system should be permitted to vote for separate representatives instead of being compelled to take part in a system-wide election.

The Board designated all yardmen of the carriers as participants in the election. The election was held and the Brotherhood was chosen as the representative. Upon the certification of the result to the carriers, petitioners sought to have the determination by the Board of the participants and the certification of the representative cancelled. This suit for cancellation was brought in the District Court. That court upheld the decision of the Board to the effect that all yardmen in the service of a carrier should select a single representative for collective bargaining. The Circuit Court of Appeals affirmed by a divided vote. 135 F. 2d 785. The case is here on a petition for a writ of certiorari which we granted because of the importance of the problems which are raised.

We do not reach the merits of the controversy. For we are of the opinion that the District Court did not have the power to review the action of the National Mediation Board in issuing the certificate.

Sec. 24(8) of the Judicial Code, 28 U. S. C. § 41(8), gives the federal district courts "original jurisdiction" of all "suits and proceedings arising under any law regulating commerce." We may assume that if any judicial review of the certificate of the Board could be had, the District Court would have jurisdiction by reason of that provision of the Judicial Code. See *Louisville & Nashville R. Co.* v. *Rice*, 247 U. S. 201; *Mulford* v. *Smith*, 307 U. S. 38; *Peyton* v. *Railway Express Agency*, 316 U. S. 350. But we do not think that that broad grant of general jurisdiction may be invoked in face of the special circumstances which obtain here.

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utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph."

If the absence of jurisdiction of the federal courts meant a sacrifice or obliteration of a right which Congress had created, the inference would be strong that Congress intended the statutory provisions governing the general jurisdiction of those courts to control. That was the purport of the decisions of this Court in *Texas & N. O. R. Co.* v. *Brotherhood of Ry. and S.S. Clerks*, 281 U. S. 548, and *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515. In those cases it was apparent that but for the general jurisdiction of the federal courts there would be no remedy to enforce the statutory commands which Congress had written into the Railway Labor Act. The result would have been that the "right" of collective bargaining was unsupported by any legal sanction. That would have robbed the Act of its vitality and thwarted its purpose. Such considerations are not applicable here. The Act in §2, Fourth writes into law the "right" of the "majority of any craft or class of employees" to "determine who shall be the representative of the craft or class for the purposes of this Act." That "right" is protected by § 2, Ninth which gives the Mediation Board the power to resolve controversies concerning it and as an incident thereto to determine what is the appropriate craft or class in which the election should be held. See *Brotherhood of Railroad Trainmen* v. *National Mediation Board*, 88 F. 2d 757; *Brotherhood of Railroad Trainmen* v. *National Mediation Board*, 135 F. 2d 780. A review by the federal district courts of the Board's determination is not necessary to preserve or protect that "right". Congress for reasons of its own decided upon the method for the protection of the "right" which it created. It selected the precise machinery and fashioned the tool which it deemed suited to that end. Whether the imposition of judicial review on top of the Mediation Board's administrative determination would strengthen that protection is a considerable question.[2] All constitutional questions aside, it is for Congress to determine how the rights which it creates shall be enforced. *Tutun* v. *United States*, 270 U. S. 568, 576-577. In such a case the specification of one remedy normally excludes another. See *Arnson* v. *Murphy*, 109 U. S. 238; *Wilder Mfg. Co.* v. *Corn Products Refining Co.*, 236 U. S. 165, 174-175; *United*

[2] "Even courts have been known to make rulings thought by counsel to be erroneous." *Crane* v. *Hahlo*, 258 U. S. 142, 148.

States v. *Babcock*, 250 U. S. 328, 331; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 404.

Generalizations as to when judicial review of administrative action may or may not be obtained are of course hazardous. Where Congress has not expressly authorized judicial review, the type of problem involved and the history of the statute in question become highly relevant in determining whether judicial review may be nonetheless supplied. See *United States* v. *Griffin*, 303 U. S. 226, 232-237. As is indicated at some length in *General Committee of Adjustment* v. *Missouri-Kansas-Texas R. Co.*, No. 23, decided this day, the emergence of railway labor problems from the field of conciliation and mediation into that of legally enforcible rights has been quite recent. Until the 1926 Act the legal sanctions of the various acts had been few. The emphasis of the legislation had been on conciliation and mediation; the sanctions were publicity and public opinion. Since 1926 there has been an increasing number of legally enforcible commands incorporated into the Act. And Congress has utilized administrative machinery more freely in the settlement of disputes. But large areas of the field still remain, in the realm of conciliation, mediation, and arbitration. On only a few phases of this controversial subject has Congress utilized administrative or judicial machinery and invoked the compulsions of the law. We need not recapitulate that history here. Nor need we reiterate what we have said in the *Missouri-Kansas-Texas R. Co.* case beyond our conclusion that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate.

In that connection the history of § 2, Ninth is highly relevant. It was introduced into the Act in 1934 as a device to strengthen and make more effective the processes of collective bargaining. *Virginian Ry. Co.* v. *System Federation No. 40*, *supra*, pp. 543-549. It was aimed not only at company unions which had long plagued labor relations (*id.*, pp. 545-547) but also at numerous jurisdictional disputes between unions. Commissioner Eastman, draftsman of the 1934 amendments, explained the bill at the Congressional hearings. He stated that whether one organization or another was the proper representative of a particular group of employees was "one of the most controversial questions in connection with labor organization matters." Hearings, Committee on Interstate & Foreign Commerce, House of Representatives, on

H. R. 7650, 73d Cong., 2d Sess., p. 40. He stated that it was very important "to provide a neutral tribunal which can make the decision and get the matter settled." *Id.*, p. 41. But the problem was deemed to be so "highly controversial" that it was thought that the prestige of the Mediation Board might be adversely affected by the rulings which it would have to make in these jurisdictional disputes. *Id.*, p. 40. And see Hearings, Committee on Interstate Commerce, U. S. Senate, on S. 3266, 73d Cong., 2d Sess., pp. 134-135. Accordingly § 2, Ninth was drafted so as to give to the Mediation Board the power to "appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election." That was added so that the Board's "own usefulness of settling disputes that might arise thereafter might not be impaired." S. Rep. No. 1065, 73d Cong., 2d Sess., p. 3. Where Congress took such great pains to protect the Mediation Board in its handling of an explosive problem, we cannot help but believe that if Congress had desired to implicate the federal judiciary and to place on the federal courts the burden of having the final say on any aspect of the problem, it would have made its desire plain.

The fact that the certificate of the Mediation Board is conclusive is of course no ground for judicial review. *Great Northern Ry. Co.* v. *United States*, 277 U. S. 172, 182. Congress has long delegated to executive officers or executive agencies the determination of complicated questions of fact and of law. And where no judicial review was provided by Congress this Court has often refused to furnish one even where questions of law might be involved. See *Louisiana* v. *McAdoo*, 234 U. S. 627, 633; *United States* v. *George S. Bush & Co.*, 310 U. S. 371; *Work* v. *Rives*, 267 U. S. 175; *United States* v. *Babcock*, *supra*. We need not determine the full reach of that rule. See *Bates & Guild Co.* v. *Payne*, 194 U. S. 106; *Houston* v. *St. Louis Independent Packing Co.*, 249 U. S. 479. But its application here is most appropriate by reason of the pattern of this Act.

While the Mediation Board is given specified powers in the conduct of elections, there is no requirement as to hearings. And there is no express grant of subpoena power. The Mediation Board makes no "order". And its only ultimate finding of fact is the certificate. *Virginian Ry. Co.* v. *System Federation No. 40*,

supra, p. 562. The function of the Board under § 2, Ninth is more the function of a referee. To this decision of the referee Congress has added a command enforcible by judicial decree. But the "command" is that "of the statute, not of the Board." *Id.*, p. 562.

The statutory mandate is that "the carrier shall treat with the representative so certified." § 2, Ninth. But the scheme of § 2, Ninth is analagous to that which existed in *Butte, A. & P. Ry. Co.* v. *United States*, 290 U. S. 127. In that case Congress provided compensation to the owners of short-line railroads for losses attributable to federal control of the main systems during the first World War. The Interstate Commerce Commission was directed by § 204 of the Transportation Act of 1920 to ascertain the amount of deficits or losses and to "certify to the Secretary of the Treasury the several amounts payable" to the carriers. And the Secretary of the Treasury was "authorized and directed thereupon to draw warrants in favor of each such carrier upon the Treasury of the United States for the amount shown in such certificate as payable thereto." Payments were made to the Butte company on such a certificate and the United States instituted suit to recover on the theory that the money had been disbursed on an erroneous interpretation of the statute. This Court, speaking through Mr. Justice Brandeis, held that since authority to interpret the statute was "essential to the performance of the duty imposed upon the Commission" and since "Congress did not provide a method of review", the Government, as well as the carrier, was "remediless whether the error be one of fact or of law." *Id.*, pp. 142-143. Cf. *United States* v. *Great Northern Ry. Co.*, 287 U. S. 144.

In the present case the authority of the Mediation Board in election disputes to interpret the meaning of "craft" as used in the statute is no less clear and no less essential to the performance of its duty. The statutory command that the decision of the Board shall be obeyed is no less explicit. Under this Act Congress did not give the Board discretion to take or withhold action, to grant or deny relief. It gave it no enforcement functions. It was to find the fact and then cease. Congress prescribed the command. Like the command in the *Butte Ry.* case it contained no exception. Here as in that case the intent seems plain—the dispute was to reach its last terminal point when the

administrative finding was made. There was to be no dragging out of the controversy into other tribunals of law.

That conclusion is reinforced by the highly selective manner in which Congress has provided for judicial review of administrative orders or determinations under the Act. There is no general provision for such review. But Congress has expressly provided for it in two instances. Thus Congress gave the National Railroad Adjustment Board jurisdiction over disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." § 3, First (i). The various divisions of the Adjustment Board have authority to make awards. § 3, First (k)-(o). And suits based on those awards may be brought in the federal district courts. § 3, First (p). In such suits "the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated." The other instance in the Act where Congress provided for judicial review is under § 9. The Act prescribes machinery for the voluntary arbitration of labor controversies. § 5, Third; § 7; § 8. It is provided in § 9 that an award of a board of arbitration may be impeached by an action instituted in a federal district court on the grounds specified in § 9, one of which is that "the award plainly does not conform to the substantive requirements laid down by this Act for such awards, or that the proceedings were not substantially in conformity with this Act." § 9, Third (a). When Congress in § 3 and in § 9 provided for judicial review of two types of orders or awards and in § 2 of the same Act omitted any such provision as respects a third type, it drew a plain line of distinction. And the inference is strong from the history of the Act that that distinction was not inadvertent. The language of the Act read in light of that history supports the view that Congress gave administrative action under § 2, Ninth a finality which it denied administrative action under the other sections of the Act.

Shields v. *Utah Idaho R. Co.*, 305 U. S. 177, is not opposed to that view. That case involved a determination by the Interstate Commerce Commission under § 1, First of the Act that the lines of the carrier in question did not constitute an interurban electric railway. The result was that the railroad company was a "carrier" within the meaning of the Act and subject to its criminal penalties. The carrier brought a suit in equity against a United

States Attorney to restrain criminal prosecutions under the Act. This Court allowed the action to be maintained even though the Railway Labor Act contained no provision for judicial review of such rulings. But the decision was placed on the traditional use of equity proceedings to enjoin criminal proceedings. 305 U. S. p. 183. Moreover, it was the action of the Interstate Commerce Commission which this Court held to be reviewable. Although the authority of the Commission derived from the Railway Labor Act, this Court quite properly related the issue not to railway labor disputes but to those transportation problems with which the Commission had long been engaged. And see *Shannahan* v. *United States*, 303 U. S. 596. The latter have quite a different tradition in federal law than those pertaining to carrier-employee relationships.

What is open when a court of equity is asked for its affirmative help by granting a decree for the enforcement of a certificate of the Mediation Board under § 2, Ninth raises questions not now before us. See *Virginian Ry. Co.* v. *System Federation No. 40*, *supra*, pp. 559-562.

Reversed.

Mr. Justice BLACK and Mr. Justice RUTLEDGE took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES.

No. 48.—October Term, 1943.

Switchmen's Union of North America, in its own right, etc., T. C. Cashen, et al., Petitioners,
vs.
National Mediation Board, George A. Cook, William M. Leiserson, et al.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[November 22, 1943.]

Mr. Justice Reed, dissenting.

This is an action by the petitioners, the Switchmen's Union of North America (hereinafter referred to as the Switchmen) and some of its members against the National Mediation Board, its members, the Brotherhood of Railroad Trainmen (hereafter referred to as the Brotherhood) and the New York Central Railroad Company and the Michigan Central Railroad Company, carrier employers of the members of the before-mentioned unions. The individual petitioners are members and officials of the Switchmen's Union and employees of one or the other of the carriers.

Petitioners were plaintiffs in the United States District Court for the District of Columbia. A certification of representatives for collective bargaining under Sec. 2, Ninth, of the Railway Labor Act[1] was made by the Board to the carriers. This certification followed the invocation of the services of the Board to investigate a dispute among the yardmen of the carriers as to their representative. The Brotherhood sought to be the representative for all the yardmen of rail lines, including the Michigan Central, operated by the New York Central Railroad Company and obtained the designation of participants in the election for representative of the employees upon this wide basis. The Switchmen contended that yardmen of certain designated parts of the carrier property should be permitted to choose separately their

[1] 44 Stat. 577, as amended 48 Stat. 1185.

own representatives instead of being compelled to take part in a carrier-wide election.[2]

The Board of Mediation is the ageney created by statute to designate employees who may participate in the selection of representatives under the act.[3] The Board undertook to perform this function and made its findings and conclusions after presentation of the issues by the Brotherhood, the Switchmen and other intervenors. The Board concluded that the

"Railway Labor Act vests the Board with no discretion to split a single carrier or combine two or more carriers for the purpose of determining who shall be eligible to vote for a representative of a craft or class of employees under Section 2, Ninth, of the Act, and the argument that it has such power fails to furnish any basis of law for such administrative discretion."

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[2] Finding 7 of the District Court shows the distribution of yardmen of the New York Central Lines based upon union affiliation, as follows:

"7. There are approximately 6,087 yardmen employed by the Railroad Company. At the time the Board's services were invoked the plaintiff Switchmen's Union represented the yardmen in all but nine yards on the New York Central—Lines West of Buffalo and in all yards on the Michigan Central west of the Detroit River, including the South Bend Transfer Crews. The defendant Brotherhood represented yardmen in yards on the Michigan Central east of the Detroit River, in nine yards on the New York Central—Lines West of Buffalo, and all yardmen on the New York Central—Lines East of Buffalo, the Toledo and Ohio Central, The Big Four, and the Boston and Albany; and at that time no one questioned the right of the Brotherhood to represent the yardmen employed on the four last mentioned lines."

[3] 48 Stat. 1185, 1188-9, sec. 2:

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph."

Consequently the Board found that the "New York Central Railroad Company and all of its operated subsidiaries . . . is a single carrier" and

"all of the employees of any given craft or class, such as yardmen, in the service of a carrier so determined must therefore be taken together as constituting the proper basis for determining their representation in conformity with Section 2, Ninth, of the Railway Labor Act.

"The mediator assigned to the investigation of this dispute will therefore proceed accordingly with the completion of his duties in connection with the Board's investigation of this dispute. That is to say, he shall regard as the proper basis for the representation of the yardmen in the service of the entire New York Central Railroad Company all of the yardmen in such service."

The election based upon this determination and certification followed in due course.

After the Board's designation of all yardmen of the carrier lines as participants in the election, the election was held and the Brotherhood chosen as the representative. As stated in the court's opinion, upon the certification of the result to the carriers, petitioners sought to have the determination by the Board of the participants and the certification of the representatives cancelled. But in addition an injunction against the Botherhood and the carriers was asked to restrain them from negotiating agreements concerning the craft of yardmen on the carriers' lines. This suit was brought in the District Court. It was there dismissed on the ground that the conclusion of the Board that all yardmen in the service of a single carrier may be taken together as constituting a proper basis for selecting a representative for collective bargaining "is reasonable, proper and not an abuse of discretion" and therefore should not be set aside. This decree was affirmed by the United States Court of Appeals for the District of Columbia but upon the ground of lack of power in the Board to act otherwise if the lines involved were a single carrier. The unity of the carrier is accepted.[4]

[4] Switchmen's Union of N. America v. National M. Board, 135 F. 2d 785, 796.

"The argument was made to the Congressional Committees that the precise language now under consideration would bring possible repercussion in railway labor relations. Specific amendments were proposed which would have allowed the division of a craft or class. Congress was not persuaded that the unification process was not in the best interest of employees and carriers.

As treated by the Board and the courts below the problem presented by this case is one of statutory interpretation, whether or not Section 2, Ninth, gives discretion to the Board to split the crafts of a single carrier into smaller units so that the members of such units may choose representatives of employees. This Court bases its conclusion upon the lack of power in any court to pass upon such an issue and leaves the interpretation of the authority granted by Section 2, Ninth, finally to the Board. With this denial of judicial power, I cannot agree.

The constitutional validity of the principle of collective bargaining concerning "grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions"[5] of employees of interstate carriers is accepted.[6] It follows that the Congress, as an incident to such legislation, has the power to designate the representative of the employees or group or craft of employees for the purpose of bargaining. Instead of making such selection itself Congress has delegated to the employees the choice of the representatives[7] and the determination of these representatives, in case of any dispute as to their identity,

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It is for Congress to determine policy. Our province is to keep the Board within the confines of that policy. We are of the opinion that the Board correctly determined it had no discretion to deny the request of a majority of the yardmen employed by the Railroad Company to appoint a representative for their craft."

[5] 48 Stat. 1185, 1186-7, sec. 2:

"(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

[6] Virginian Ry. v. Federation, 300 U. S. 515, 553; Texas & N. O. R. Co. v. Ry. Clerks, 281 U. S. 548, 570.

[7] 48 Stat. 1185, 1187, sec. 2:

"Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier

to the National Mediation Board. As these delegations are surrounded by adequate standards no question is raised as to the validity of the statutory provisions for the selection or determination of the representatives. Cf. *Opp Cotton Mills* v. *Admr. of Wage and Hour Div.*, 312 U. S. 126, 142-146.

Where duties are delegated, as here, to administrative officers, those administrative officers are authorized to act only in accordance with the statutory standards enacted for their guidance. Otherwise we should risk administrative action beyond or contrary to the legislative will. Cf. *United States* v. *Carolina Freight Carriers Corp.*, 315 U. S. 475, 489. The Railway Labor Act does not provide specifically for judicial review of the certification by the Mediation Board under Sec. 2, Ninth, of representatives, even though that certification is based upon an erroneous interpretation of the statute. Nor is there any clause in the act granting to interested parties, generally, a right to have actions of the Board reviewed. Where an act fails to provide for review of preliminary rulings determining status in preparation for subsequent action,[8] or performing administrative duties which were not final in character,[9] such rulings have not been considered as subject to review by virtue of general statutory review provisions. The reason that review is not allowed at such a stage is that the rulings or orders are only preparation for future effective action. The *Rochester Telephone Corporation* case, 307 U. S. at 143-4, teaches that where this otherwise abstract determination of status has instantaneous, final effect, such determination comes under general statutory review provisions. In the present instance the certification of Sec. 2, Ninth, is but a preparatory

in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization."

[8] Rochester Tel. Corp. v. United States, 307 U. S. 125, 130; Shannahan v. United States, 303 U. S. 596, 599.

[9] United States v. Griffin, 303 U. S. 226, 234; United States v. Los Angeles & S. L. R. Co., 273 U. S. 299, 309-310.

step to bring about the collective bargaining which is the essential purpose of the Act but it does have an immediate effect since it destroys the petitioners' alleged right to participate in an election based on their view of the proper electoral unit. Yet there is no direct review of the certification, general or special, by the terms of the Railway Labor Act.

Nor is there necessarily an opportunity to attack the certification in later proceedings. An award of the Adjustment Board probably could not be challenged by the parties, in a judicial proceeding for its enforcement, on the ground that the representatives were not properly chosen since this error would be irrelevant to the employee's rights.[10] On the other hand, the award of a board of arbitration under Sec. 7 is subject to attack through statutory review provided by Sec. 9, First, Second and Third. We construe the provision of Third (a) that the award may be impeached because "the proceedings were not substantially in conformity with this Act" to refer to the selection of bargaining representatives.[11] No other orders under the Act, legally binding on employees, spring from acts of bargaining representatives.[12]

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[10] Sec. 3(m), (n), (o), (p).

[11] 44 Stat. 577, 585, sec. 9:

"Third. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

"(a) That the award plainly does not conform to the substantive requirements laid down by this Act for such awards, or that the proceedings were not substantially in conformity with this Act; . . ."

That "proceeding" has such a meaning is strongly indicated by Sec. 7, First, which reads as follows:

"Sec. 7. First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: . . ."

A binding arbitration brought about by improperly chosen representatives would be farcical.

[12] 44 Stat. 577, 586-7, as amended by 48 Stat. 1185, 1197, sec. 7:

"*Emergency Board.* Sec. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no

The petitioners may not have an opportunity to impeach or contest an award of a board of arbitration reached after collective bargaining. The negotiations between the certified representative and the carriers may not require orders of the Adjustment Board or the board of arbitration. Mediation may compose the differences. Sec. 5. In such cases there is no opportunity for the petitioners to intervene. As a consequence the Switchmen's Union and its members are left without an opportunity specifically provided by the Act to contest the ruling of the Board of Mediation that the Act "vests the Board with no discretion to split a single carrier . . . for the purpose of determining who shall be eligible to vote for a representative of a craft or class of employees under Section 2, Ninth, of the Act, . . ." They exhausted their administrative remedy when they appeared before the Mediation Board. 303 U. S. 41, 50.

The members of the Switchmen's Union and the Union itself, in view of the fact that it was the bargaining representative of its members prior to this controversy (R. 79), have an interest recognized by law in the selection of representatives. *Texas & N. O. R. Co.* v. *Ry. Clerks*, 281 U. S. 548, 571. This right adheres to his condition as an employee as a right of privacy does to a person. This right is created for these employees by the Railway Labor Act and, in appropriate proceedings, a remedy, provided by the general jurisdiction of district courts, to test the extent of this right to select representatives follows from the creation of the right unless negatived by statute, withdrawal of jurisdiction or the like, when the right is claimed to be infringed. *Idem*, 569-70; *Virginian Ry.* v. *System Federation*, 300 U. S. 515, 543. The remedy may not be available to parties with a standing to enforce it because, for example, the infringement may be by governmental action without consent of the Government to be sued for a wrong committed by it. The fact that the remedy may come from the general jurisdiction of the courts rather than from the review provisions of the Act is not significant. We cannot conclude that because no statutory review exists no remedy for misinterpretation of statutory powers is left. No such presumption of obliter-

member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation."

ation of rights may be entertained. *A. F. of L.* v. *Labor Board*, 308 U. S. 401, 412; *United States v. Griffen*, 303 U. S. 226, 238; *Shannahan* v. *United States*, 303 U. S. 596, 603.

The Court in this case and in *General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad* v. *Missouri-Kansas-Texas Railroad Company, et al.*, decided today, gives as reasons for denying power to the courts to determine the meaning of the statute the history of federal railway labor legislation and the omission of any provision in this act for review of the determination of voting participants under Section 2, Ninth.

The history of this legislation is adequately stated in the opinions to which reference is made in the preceding paragraph. From their review of the successive enactments in this field, it is plain that until the 1926 act, the scheme for adjustment of railway labor disputes was without legal sanctions. In that act, Section 2, Third,[13] Section 9, Second,[14] providing for the enforcement of arbitration awards, and Section 10, authorizing emergency boards and forbidding changes in the conditions out of which the controversy arose for thirty days after the creation of an emergency board, established rights which were legally enforceable. The statute made the awards of Section 9 subject to judicial control but only a dictum of this Court as to Section 10 and judicial interpretation of Section 2, Third, provided judicial sanction to compel compliance with their provisions. *Texas & N. O. R. Co.* v. *Clerks*, 281 U. S. 548, 564, 566-70.

The 1934 Act was directed particularly at control over the initial step in collective bargaining—the determination of the employees'

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[13] 44 Stat. 577, 578, sec. 2:

"Third. Representatives, for the purposes of this Act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other."

[14] *Id.*, 585, sec. 9:

"Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties."

representatives. Section 2, Ninth, here under examination, was an entirely new provision.[15] By the *Clerks* case, just cited, decided in 1929 and well known as a landmark of labor law, this Court had upheld judicial compulsion on the carrier to prohibit its interference in the selection of employee representatives even though there was no statutory authority for such judicial action.[16] Section 2, Ninth of the 1934 Act created by its terms a right in employees to participate in an election under the designation of the Board in accordance with the authorization of the statute. It was only natural therefore that Congress should assume that where its own creature, the Mediation Board, was charged with interference with the right of employees by a misconstruction of the statute under which it existed, that error of law would be subject to judicial examination to determine the correct meaning.

Nothing to which our attention has been called appears in the legislative history indicating a determination of Congress to exclude the courts from their customary power to interpret the laws of the nation in cases or controversies arising from administrative violations of statutory standards. No intention to refuse judicial aid in administration of the act is apparent. Attention was called just above to the criminal sanctions written into Section 2, Tenth. In addition provision is made in the act for judicial review of the orders of the National Railroad Adjustment Board, Section 3, First (p), and board of arbitration awards, Section 9, Third. Furthermore, the National Mediation Board has appeared in many court cases, as here, involving its certifications and so far as appears neither the parties nor the courts have questioned judicial

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[15] Other completely new sections were the "General Purposes" of Sec. 2 and Sec. 2, Fourth, Fifth, Seventh, Eighth and Tenth. By Tenth criminal sanctions were applied to compel carrier compliance with the commands of Fourth, Fifth, Seventh and Eighth. These subdivisions were concerned with the right of employees to organize and to choose freely their representatives.

[16] 281 U. S. 548, 569:

"The absence of penalty is not controlling. The creation of a legal right by language suitable to that end does not require for its effectiveness the imposition of statutory penalties. Many rights are enforced for which no statutory penalties are provided. In the case of the statute in question, there is an absence of penalty, in the sense of specially prescribed punishment, with respect to the arbitral awards and the prohibition of change in conditions pending the investigation and report of an emergency board, but in each instance a legal obligation is created and the statutory requirements are susceptible of enforcement by proceedings appropriate to each. The same is true of the prohibition of interference or coercion in connection with the choice of representatives. The right is created and the remedy exists. Marbury v. Madison, 1 Cranch, 137, 162, 163."

power.[17] The Board feels that such review has been profitable.[18] Against these later facts, the earlier reliance, prior to 1926, on voluntary action to enforce the railway labor statutes has little significance.

Nor in view of the statements and the decision in the *Clerks* case, do we think that the omission of statutory review from the provisions of Section 2, Ninth, is important. The requirement of that very subsection that "the carrier shall treat with the representatives so certified" was construed as an affirmative command open to judicial enforcement without specific statutory authority. *Virginian Ry.* v. *Federation*, 300 U. S. 515, 544.

Butte, A. & P. Ry. Co. v. *United States*, 290 U. S. 127, is cited as authority for a conclusion that delegation of an administrative duty carries to the appointee the authority to finally construe

[17] Railroad Trainmen v. National Mediation Board, 88 F. 2d 757; Railway Workers v. National Mediation Board, 110 F. 2d 529; Railway Conductors v. National Mediation Board, 113 F. 2d 531. See also Clerical Employees v. Railway Clerks, 85 F. 2d 152; Railway Clerks v. Virginian Ry., 125 F. 2d 853; Firemen & Enginemen v. Kenan, 87 F. 2d 651; Nashville, C. & St. L. Ry. v. Railway Employees' Dept., 93 F. 2d 340; Railway Clerks v. Nashville, C. & St. L. Ry., 94 F. 2d 97.

[18] Annual Report of the National Mediation Board, 1938, p. 5:

"The two cases decided by the courts clarifying the discretion vested in the National Mediation Board in connection with representation disputes both arose on the Nashville, Chattanooga & St. Louis Railway, and both were decided by the United States Circuit Court of Appeals for the Sixth Circuit. The first case, [*Nashville, Chattanooga & St. Louis Railway* v. *Railway Employes Department, American Federation of Labor*, 93 F. 2d 97] settled the issue concerning the right of furloughed employees retaining an employment status to vote in representation elections. The second decision [*Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, et al.* v. *The Nashville, Chattanooga & St. Louis Railway Co.*, 94 F. 2d 340] held that the National Mediation Board, when establishing eligible lists of voters and conducting elections in order to determine the representative of employees of a carrier by craft or class must do so with due regard for all of the facts, historical and otherwise, which have operated to shape the craft or class of employees on the carrier concerned as well as on railroads generally. Both decisions are very helpful to the Board in that they serve to settle issues which, in the past, have frequently arisen to trouble the orderly and prompt adjustment of disputes over representation between different factions among employees."

Id., 1942, p. 7:

"During the 8-year experience of the Board under the representation provisions of the law it is gratified to be able to report that in all but a few instances its actions in interpreting and applying these provisions of the law have been sustained by the courts. In all instances, however, the Board has benefited by court review and analysis of its actions and the facts of the disputes. The court rulings and opinions have clarified and settled many disputed points of the law and the Board's authority. Thus they constitute a valuable contribution in the solution of labor disputes."

the statute since such authority was "essential to the performance of the duty imposed upon the Commission" and since 'Congress did not provide a method of review,' the Government, as well as the carrier, was 'remediless whether the error be one of fact or of law.'" This was a case in which the Government ordered payments to carriers as compensation for deficits incurred during federal operation of the railways. It was determined that Congress intended to leave finally the determination of the beneficiaries to its agent, the Interstate Commerce Commission. This intention is far easier to deduce when the Congress is dealing with its own money than where it creates rights of suffrage for citizens to exercise for the improvement of their economic condition.

The *Virginian Railway* case presents a much closer analogy to the present controversy. As pointed out above, it dealt with the carrier's duty to "treat with" employees declared by Section 2, Ninth. Employees sought and obtained a judicial order directing the railroad to negotiate on the ground that new duties, requirements and rights were created "mandatory in form and capable of enforcement by judicial process." Despite the absence of statutory authority for court action it was held Congress intended legal sanction. A prohibition of negotiation, such as petitioners seek here, is, a fortiori, within judicial competence.[19]

One factor to test the intention of Congress, it is suggested in the M.K.T. opinion of today, is whether Congress was willing to crystallize the problem into "statutory commands." The statutory command for which determination is sought here is that the Board exercise its discretion. In the same opinion, it is said, "the command of the Act should be explicit and the purpose to afford a judicial remedy plain before an obligation enforcible in the courts should be implied."

[19] Compare Sunshine Anthracite Coal Co. v. Adkins, 310 U. S. 381, 391, where this Court took cognizance of a suit seeking judicial review of administrative action without such authority in the statute under attack. See § 6, Bituminous Coal Act, 50 Stat. 85. Review was had under Judicial Code § 24(1) and 28 U. S. C. § 380(a).

relations rather than in that of statutory construction. Of course the judiciary does not make the administrative determination. "The functions of the courts cease when it is ascertained that the findings of the Commission meet the statutory test." *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381, 400. Likewise, the National Mediation Board may be conceded discretion to make any reasonable determination of the meaning of the words, "craft or class." Cf. *Gray* v. *Powell*, 314 U. S. 402. By requiring a plain sanction for a judicial remedy, the court authorizes the Mediation Board to determine not only questions judicially found to be committed to its discretion, as in *Gray* v. *Powell*, *supra*, but the statutory limits of its own powers as well. It seems more consonant with the genius of our institutions[20] to assume, not that the purpose to apply a legal sanction must be plain, but that in the absence of any express provision to the contrary, Congress intended the general judicial authority conferred by the Judicial Code to be available to a union and its members aggrieved by an administrative order presumably irreconcilable with a statutory right so explicitly framed as the right to bargain through representatives of the employees' own choosing.[21]

The petitioners assert their rights as rights arising under the Railway Labor Act, which is stated to be a law of the United States relating to interstate commerce. If this allegation is correct, and we think it is, there is jurisdiction of the subject matter of the suit under Judicial Code, section 24(8): "The district courts shall have original jurisdiction as follows: . . . Eighth. Of all suits and proceedings arising under any law regulating commerce." The general purpose of the act is to avoid interruption to commerce by prohibition of interference with the employees'

[20] An erroneous order of the Secretary of the Interior was similarly canceled when, without statutory authority, he struck the name of an enrollee from the rolls of an Indian Nation. This Court said: "But, as has been affirmed by this court in former decisions, there is no place in our constitutional system for the exercise of arbitrary power, and if the Secretary has exceeded the authority conferred upon him by law, then there is power in the courts to restore the status of the parties aggrieved by such unwarranted action." Garfield v. Goldsby, 211 U. S. 249, 262. Cf. Ness v. Fisher, 223 U. S. 683, 694. Compare Ickes v. Fox, 300 U. S. 82; West v. Standard Oil Co, 278 U. S 200, 220; Work v. Louisiana, 269 U. S. 250, 254.

[21] When Congress has intended to bar access to the courts, in whole or in part, it has understood how to express its determination. Emergency Price Control Act of 1942, sec. 204, 56 Stat. 23; chap. 335, 23 Stat. 350; sec. 4(b), 44 Stat. 828.

freedom of association and by provision for collective bargaining to settle labor disputes.[22] This regulates commerce.

The right to select representatives with whom carriers must bargain was created by the Act and the remedy sought here arises under that law. Since the cause of action "had its origin and is controlled by" the Railway Labor Act, it arises under it. *Peyton* v. *Ry. Express Agency*, 316 U. S. 350; *Mulford* v. *Smith*, 307 U. S. 38, 46; *Turner Lumber Co.* v. *C. M. & St. Paul Ry.*, 271 U. S. 259, 261; *Louis. & Nash. R. R. Co.* v. *Rice*, 247 U. S. 201.

Since the Court declines federal jurisdiction, it is useless to discuss either the merits or the other procedural questions such as jurisdiction in equity to grant the injunction requested, the power to vacate the order of the Mediation Board or the effect of the Norris-LaGuardia Act.

Mr. Justice ROBERTS and Mr. Justice JACKSON join in this dissent.

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[22] 48 Stat. 1185, 1187, sec. 2:

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof." See note 5.